LEGAL SERVICES CORPORATION

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

FEBRUARY 28, 2002

Serial No. 66

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://www.house.gov/judiciary

U.S. GOVERNMENT PRINTING OFFICE

77–899 PDF WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., WISCONSIN, *Chairman*

HENRY J. HYDE, Illinois
GEORGE W. GEKAS, Pennsylvania
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
ED BRYANT, Tennessee
STEVE CHABOT, Ohio
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
LINDSEY O. GRAHAM, South Carolina
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
DARRELL E. ISSA, California
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana

JOHN CONYERS, JR., Michigan
BARNEY FRANK, Massachusetts
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California

PHILIP G. KIKO, *Chief of Staff-General Counsel*
PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

BOB BARR, Georgia, *Chairman*

JEFF FLAKE, Arizona, *Vice Chair*
GEORGE W. GEKAS, Pennsylvania
MARK GREEN, Wisconsin
DARRELL E. ISSA, California
STEVE CHABOT, Ohio
MELISSA HART, Pennsylvania

MELVIN L. WATT, North Carolina
JERROLD NADLER, New York
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
MAXINE WATERS, California

RAYMOND V. SMIETANKA, *Chief Counsel*
SUSAN JENSEN-CONKLIN, *Counsel*
ROBERT NEIRA TRACCI, *Counsel*
PATRICIA F. DEMARCO, *Full Committee Counsel*
STEPHANIE MOORE, *Minority Counsel*

CONTENTS

FEBRUARY 28, 2002

OPENING STATEMENT

WITNESSES

APPENDIX

STATEMENTS SUBMITTED FOR THE RECORD

MATERIAL SUBMITTED FOR THE RECORD

LEGAL SERVICES CORPORATION

THURSDAY, FEBRUARY 28, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:13 a.m., in Room 2141, Rayburn House Office Building, Hon. Bob Barr [Chairman of the Subcommittee] presiding.

Mr. BARR. Good morning. The Subcommittee on Commercial and Administrative Law will come to order.

This Subcommittee meets today to conduct oversight of the Legal Services Corporation, which was created in 1974 by the Legal Services Corporation Act as an independent, nonprofit, nonpartisan legal services provider.

The Corporation receives Federal funding of approximately $300 million per year. The original intent of the legislation establishing the agency was to provide necessary legal services to the poor of this country. This Subcommittee remains supportive of this goal.

However, since its inception, this program has been plagued with problems and controversy and remains so today.

Today we are going to discuss a number of important issues, among them the following: Has an effective system of competition been implemented by the Corporation, and how is this system working? Are the decisions of the Erlenborn Commission, particularly with respect to the H-2A agricultural guest worker program, impacting the country's agriculture community? And if so, how? Have Legal Services Corporation grantees been maintaining program integrity as required by regulations? Or is the problem we saw in the 1980's, known as mirror corporations, seeing a resurgence? What types of changes have been made by Legal Services Corporation grantees to clean up the case-overcounting problem described at length in the GAO's 1999 report?

We're going to talk about the Supreme Court's decision last term in the case of *Legal Services Corporation* vs. *Velazquez* and discuss the related follow-up case of *Dobbins* vs. *Legal Services Corporation.*

Over two decades, Congress has listened to complaints about Legal Service lawyers who were not serving the needs of the poor but rather were using taxpayer money to fund liberal political and ideological causes. In response to these complaints, in 1996 Congress passed a series of reforms and restrictions regulating the Corporation and the work of its grantees.

Now, almost 6 years later, since those reforms were passed, it is time for Congress to consider seriously the question of whether these restrictions have been effectively implemented, whether there has been full and complete compliance by the grantees within the legal restrictions, and, moreover, what role the Board of Directors has played in all of this.

As we meet today, Congress continues to hear complaints about the true mission of Legal Services lawyers and how the reforms are being violated or circumvented.

This Subcommittee last met in 1999 to consider the results of an investigation by the LSC Inspector General, who was the first to uncover somewhat astounding discrepancies between the number of cases reported to Congress and the number of cases actually handled. Then, at the request of the Congress, the General Accounting Office issued a report highly critical of the Corporation when a random sampling of the Legal Services Corporation's five largest grantees found an astounding 30 percent of cases reported—that were reported as handled to the Congress were questionable—some cases counted as many as 18 times.

These case-handling statistics are extremely important to Congress as they are used by both Congress and the LSC in the appropriations process.

Today the Subcommittee is interested in hearing what the Corporation has done to assure the accountability of its grantees.

Another area on which the Subcommittee will focus is the question of how the congressional mandate to the Corporation to implement an effective system of competition is proceeding. The critical questions we must ask include whether the system is working to promote competition among potential recipients in an effort to assure the most-worthy grantees are awarded these Federal grants, and, secondly, will the program recipients provide the best service at the best price? Next, Congress will revisit the problem our agricultural communities continue to experience, especially with the H-2A or agricultural guest worker program.

We will have with us today Mr. Bremer, from my home State of Georgia. Dan Bremer is an administrator of the agricultural guest worker program and has experienced firsthand the frustration of dealing with the Legal Services lawyers.

Those of you familiar with the H-2A program, which is, coincidentally, considered the so-called "clean jeans" of the agricultural programs within the Department of Labor, is a program continually targeted by numerous lawsuits—lawsuits which threaten the prosperity of our agricultural communities, especially our family farmers.

For example, Dan Bremer approached Legal Services prior to any litigation, desiring to work with Legal Services to address any problems without costly litigation. For this effort, in just over a month, a Legal Services lawsuit was filed.

Why are the American agricultural communities targeted in this way? Perhaps because the activist Legal Service lawyers' true agenda is to see the guest worker program eliminated in favor of unionized labor.

This example is even more problematic when we consider that Mr. Bremer's own secretary, although client eligible, was turned

down when she sought representation for recovery of child support payments from with the Georgia Legal Services program. They wrote to her, and I quote: "Due to limited resources and staff, this office is unable to assist each person who requests representation." Yet the Georgia Legal Services program continues to find the time to harass our farmers with costly and frivolous lawsuits.

Clearly, this was not the way Congress intended the program to work. And in every way, this practice violates the very spirit of the legislation.

The Subcommittee will also want to ask questions about whether there is a resurgence of the problem noted in the 1980s, commonly known as mirror corporations. Basically, we have a situation in which grantees refuse to accept government money so they can engage in congressionally restricted activities. However, they then do such things as share office space, equipment, and even personnel with LSC grant recipients.

More troubling, however, is the fact that the Board of Legal Services has found that these arrangements do not violate the "physically and financially separate" requirements set out in the regulations.

Let me be very clear: We are not here today in any way to intimate that the poor of this country do not need legal services. We are supportive of this goal. There are low-income Americans who need representation in spousal and child abuse cases, low-income Americans who need representation in eviction and foreclosure cases, and low-income Americans who need representation in consumer cases, such as bankruptcy and collection issues.

These are all very legitimate circumstances in which low-income citizens require legal assistance, and these are precisely the types of work Congress intended to fund and supports. However, the use of Federal taxpayer dollars, particularly in a time of an economic slowdown, to fund political and ideological causes is not justified.

We will examine the results of the Erlenborn Commission interpreting section 504 of the 1996 restrictions. The Commission essentially changed congressional statutory language regarding the representation of aliens who are outside of the United States from "is present" to "was present."

The integrity of this program depends on full, consistent, and actual compliance with all Federal laws and regulations, not finding lawyer-related activities to find technical ways to circumvent those mandates.

President Bush has requested level funding of $329 million for fiscal year 2003 for LSC. However, this should not send a green signal to either the Corporation, the Board of Directors, or its grantees, that Congress will turn a blind eye to any continuing violations or circumvention of the mandated restrictions.

Congress has been informed by the White House that President Bush will be announcing his 11 Board nominees shortly. This hearing should serve as notice to the incoming Board that Congress has significant concerns with the Corporation, and its grantees, and will continue to monitor the LSC very carefully to ensure it fulfills its original mission fully and lawfully.

At this time, I'd like to recognize the distinguished Ranking Member of the Subcommittee for any opening remarks he might care to make. The gentleman is recognized.

Mr. WATT. Thank you, Mr. Chairman.

I'll be brief, because I want to get on to the witnesses. I do want to make two or three points.

Number one, it is clearly a role of this Subcommittee and the full Judiciary Committee to provide oversight to the Legal Services Corporation, and I applaud the Chairman of the Subcommittee for convening this hearing today to pursue that objective and serve that role that we appropriately play.

Number two, while we have a very important role to play in the oversight of the Legal Services Corporation, as we do in a number of other agencies and—of government and of other agencies that are not directly under the government, we should keep in mind that the Legal Services Corporation has its own Board of Directors and that our role is oversight and not micromanagement.

Number three, I want to make the point that I believe that the combination of the Legal Services Corporation and other nongovernmental legal services type organizations and the legal—and the public defender program on the criminal side play perhaps among the most important roles that any organizations and institutions play in our society, because people who are without funds and cannot afford legal representation, either on the civil side or on the criminal side, deserve to have their day in court, just as people who can afford access to the courts deserve to have their day in court. And to the extent that we undermine or undercut the ability of people to get into our court system and receive the kind of justice that our Nation stands for, people will find ways outside the acceptable process to assert prerogatives that they believe they have.

And so I think our access to justice, a substantial part of which for poor people is provided through the Legal Services Corporation and for criminal defendants is provided through the public defender service, provides among the most important services that our government can provide, helping dispense justice and helping people perceive that they are dealt with justly in our democratic and capitalist entities in this country.

Finally, I would say to you that it has not gone unnoticed by me that, despite our best efforts, we are still serving—based on reliable estimates that I was not involved in preparing, but somebody spent some time to prepare—at best, we are providing approximately 20 percent of the need that is out there. We are meeting approximately 20 percent of the need.

And that's positive for the 20 percent that are receiving the services but sends a very, very troubling message to the other 80 percent of poor people who would like the same kind of access to justice and are not being able to afford it. That problem exists on the civil side through Legal Services. I think it is dramatically beginning to exist on the criminal side, because of substantial increases in prosecutorial staff vis-a-vis the staffs of the public defender services.

We are not here today to discuss that, but I want to put on record that I think that we ought to be trying to have some hearings about how we address providing services to the other 80 per-

cent that all of us concede—maybe all of us don't concede we ought to be providing services to—but I believe we should be providing services to, as a Nation, if we are going to live out our creed to provide justice for all.

I thank the Chairman for convening the hearing, and I look forward to hearing the witnesses, and thank them for being here to help us pursue our oversight responsibilities.

I yield back.

Mr. BARR. I thank the gentleman from North Carolina.

I'd like to, at this time, recognize the distinguished gentleman from Pennsylvania, the former Chairman of this Subcommittee, who has laid the groundwork over the past three congresses for many of the reforms and has done an outstanding job in his capacity as a former Chairman of the Subcommittee to conduct appropriate oversight. The gentleman from Pennsylvania is recognized.

Mr. GEKAS. I thank the Chair, and I wish to commend the Chair for assembling such a distinguished group of witnesses, because they carry with them, just by their presence, the historical background of the entire situation surrounding Legal Services Corporation, all its problems, all its assets, all its accomplishments, all the detriments that are attributed to it. All of this is replete in the forthcoming testimony. I'm eager to hear it, and I will participate in the session to ask some questions that follow.

I yield back the balance of my time.

Mr. BARR. I thank the distinguished former Chairman.

Are there other Members that wish to make an opening statement or shall we proceed with the witnesses? Thank you.

Of course, Members will have an opportunity to submit additional materials, including statements, as will the witnesses. Any materials that the witnesses have that we do not get to today, either because of the press for time or because additional materials become available, will be entered as part of the record.

Counsel, how many days will the record remain open for additional materials?

For five business days. So if the witnesses would keep that in mind, we certainly welcome as much material as you would like to make available to us, to ensure that we have as full a record as possible.

Mr. WATT. Seven days is——

Mr. BARR. Seven days? Do I hear seven? [Laughter.]

Sold. We've got 7 days.

Mr. WATT. Can I get an eight? [Laughter.]

Mr. BARR. This morning the Subcommittee is honored to have a very distinguished panel to share their views with us on the Legal Services Corporation. I will first introduce the entire panel of four gentlemen in the order of their testimony. We will then proceed to hear from the entire panel in that order.

Members will each be given 5 minutes then to ask questions of the witnesses. And depending on the floor schedule and additional questions, we may have an additional round.

We understand that former Attorney General Ed Meese has to leave early to chair a committee or panel on homeland security.

Is that correct, Mr. Meese?

Mr. MEESE. Yes, it is.

Mr. BARR. Understanding that that is of more than passing interest to all of us, we certainly understand that, and we appreciate your taking the time, as with the other witnesses as well, to be with us here today. And we will be respectful of your need to leave by about 11 o'clock.

And if Members could keep that in mind, so if there are any particular questions that they would like posed to Attorney General Meese, we will certainly make accommodations to do those and take those questions before you leave, Mr. Meese.

As is the Subcommittee's practice, each witness is requested to limit their opening statement to 5 minutes. The entire written statement, as I mentioned, will be made a part of the official record.

Our first witness is the Honorable Edwin Meese, former Attorney General of the United States. Mr. Meese presently serves as the Ronald Reagan Distinguished Fellow in Public Policy at the Heritage Foundation and as a visiting fellow at the Hoover Institution at Stanford University. Mr. Meese has held numerous legal posts during his distinguished career, in addition to serving as Attorney General and Counselor to former President Reagan. He also served as Chairman of the Domestic Policy Council and the National Drug Policy Board. He has practiced law, been a business executive, educator, lecturer, and prosecutor. He is a graduate of Yale University and received his law degree from the University of California-Berkley. Mr. Meese continues to write and lecture widely on a variety of legal and related issues.

I would also note that, for many years, General Meese has participated in working very closely with and trying to coordinate and help direct the activities of many public interest law firms across the country. And that, I think, gives him special expertise to provide advice and counsel to the Congress regarding the Legal Services Corporation.

We welcome you, Mr. Meese, to this Subcommittee this morning.

To General Meese's left is another very distinguished former Member of Congress, the Honorable John Erlenborn, the current President of the Legal Services Corporation. Mr. Erlenborn has served on the Board of the Corporation as Vice President, after appointment by Presidents of both parties, first by President George H. W. Bush in 1989 and then on reappointment by President Bill Clinton in 1995. In addition to being a Member of the House of Representatives for some two decades, Mr. Erlenborn was one of the floor managers of the legislation that originally created the Legal Services Corporation in 1974.

Mr. Erlenborn is currently in private practice here in Washington, D.C., and is an adjunct professor at Georgetown University Law Center. After receiving his law degree from Loyola University in Chicago, he served as an assistant State's Attorney in Illinois, before beginning his lengthy and very distinguished public service career as a State legislator and later a Member of Congress.

Mr. Erlenborn, there is no person here more appropriate to address the issues regarding Legal Services Corporation than yourself, and we appreciate you're taking time from a very, very busy workload, including serving as President of Legal Services Corporation, to be with us today and share your views and expertise.

The next witness is Kenneth Boehm, the chairman of the National Legal and Policy Center. In that capacity, he has organized the Legal Services Accountability Project, which has documented hundreds of questionable cases brought by Legal Services lawyers, and he has testified previously before Congress on abuses within the Federal Legal Services program.

Mr. Boehm has previously served at the Legal Services Corporation as an assistant to the president and counsel to the Board. He also held a position as Director of the Office of Policy Development and Communications.

Mr. Boehm received his undergraduate degree from Penn State University and his law degree from Widener University School of Law.

Mr. Boehm, we appreciate your being with us today and bringing your expertise, both from the inside and the outside, to bear on this matter.

Our final witness today is yet another distinguished gentleman with a long history and knowledge of and service with Legal Services, L. Jonathan Ross. He is testifying today on behalf of the American Bar Association. He is currently chair of the ABA's Standing Committee on Legal Aid and Indigent Defendants.

Mr. Ross has been an active member of the ABA for more than three decades and has been involved in Legal Services activities since his days in law school.

He has more than 35 years' experience in the legal services field and serves as director of Litigation and Family Law in his private practice in Manchester, New Hampshire.

Mr. Ross is a graduate of Hobart College and received his law degree from Georgetown University and a Master's in Law from Harvard Law School.

Mr. Ross, we very much appreciate your being with us today and lending your considerable expertise to the work of this Subcommittee and the entire Congress. Thank you.

At this time, I'd also before—excuse me, General Meese.

Before we turn to the witnesses, I'd like also to welcome three representatives from the Georgia Growers Association, Dan Bremer, Danny William and Kent Hamilton.

Gentlemen, we appreciate very much your being with us today.

The Georgia Growers—if they could stand, please? Thank you very much, gentlemen.

The Georgia Growers Association is one of the many organizations across the country representing members that have been forced to spend vast amounts of money and time defending malicious lawsuits that do not fall within the spirit of the Legal Services Corporation congressional mandate. We welcome these gentlemen and will have their statement entered into the record.

[The prepared statement of the Georgia Growers Association follows in the Appendix]

Mr. BARR. I would also state that I know these gentlemen, Mr. Erlenborn, are very concerned about retaliatory action against them, and I know that that is of great concern to you and would appreciate your attention, if there are any, for any problems along those lines.

With that, General Meese, we're happy and honored to have you with us today, and you would—if you would, please, proceed with your opening statement.

If all the witnesses could bear in mind that the technology before us is not 21st century; they have to pull the mikes very, very close and make sure that they're on, so that the court reporter is able to pick up every pearl of wisdom.

STATEMENT OF THE HONORABLE EDWIN MEESE, CHAIRMAN, CENTER FOR LEGAL AND JUDICIAL STUDIES, HERITAGE FOUNDATION

Mr. MEESE. I think it's on now. Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify at this hearing today on the Legal Services Corporation.

Let me say that at the Heritage Foundation, which, as the Chairman mentioned, I'm currently located, I'm chairman of the Center for Legal and Judicial Studies at that Foundation. The Heritage Foundation, I might add, in accordance with your rules, is a public policy research and educational organization operating under 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from the Federal Government.

At the outset, let me say that I have great respect for Mr. Erlenborn sitting here with me and personally know some of the members of the LSC board. But concerns about the program still continue and about the Legal Services Corporation as an institution.

My testimony today is directed primarily at the importance of the LSC Board in controlling a taxpayer-funded program that is very susceptible to abuse by ideologically oriented lawyers at the level, often far from Washington, DC, where litigation actually takes place.

A few examples are instructive, but by no means exhaustive, of this need for firm controls.

One of the situations that kind of illustrates this and gives a legal background for it was the case in which the Regional Management Corporation filed an administrative complaint with the Legal Services Corporation, accusing lawyers of that organization of improperly lobbying the South Carolina State Legislature in violation of both Federal law and LSC guidelines.

After the complaint was dismissed by the LSC, the Regional Management Corporation sought judicial review. The trial judge found that LCS had failed to fully investigate the charges and that they did not have a rational basis for determining that the lawyers involved did not violate Federal law. But when the case went up on appeal, the appellate court ruled that the—that, ultimately, because it was a private corporation as set up by Congress, was not subject to judicial review, and, therefore, the oversight was totally by the LSC board, and ultimately congressional oversight, which is taking place today.

This illustrates, I think, the importance, then, of the Board carrying out its responsibilities.

Another case—situation that, I think, is important has to do with the issue of competition. One of the things, if you look at the situation in grants in most communities, there still is but a single appli-

cant for the grants and competition still remains, I think, somewhat far from what Congress had intended.

Perhaps the most serious recent problem, which involves—which the Chairman referred to in his opening remarks, have to do with issue of representation of aliens. In spite of the congressional prohibition, the LSC and LSC recipients sent letters to a number of farm workers in Mexico in 1998 and traveled there actually to recruit potential clients for lawsuits against American farmers. When this illegal activity was uncovered, and pressure was brought to bear, the LSC cut off funding to the offending group. But the group merely reopened under a different name, which over the past several decades has actually been a regular tactic of the grantees, and that is, when found to be violating Federal laws, they simply open through subterfuges and under different names.

Following this, the Legal Services Corporation convened a special commission to determine the meaning of the phrase "is present in the United States," and defined it to mean "is now or once was present." As a result, suits are being brought on behalf of aliens living in Mexico more than a year after those foreign nationals left employment in the United States.

I might point out that this is one of the most serious issues, because most litigation in this country is controlled by economic factors. But when the deep pocket of the Federal Government enters into the litigation, that puts a thumb on the scales of justice, and, therefore, again, it's—the persons who are sued are often at an extreme disadvantage.

I see that my time is almost up. There are other examples that I could give, which are contained in my testimony, which, as I understand, Mr. Chairman, will be made a part of the record.

But let me say that the—it is important, I feel, that the reforms which have been initiated by Congress as recently as 1996 need to be monitored so that the taxpayer-funded Legal Services Corporation is not used to the detriment of other citizens in this country and is used for the proper purpose for which it was intended, and that is to handle the routine legal matters of low-income people in the United States.

I thank you for the privilege of being with you this morning.

[The prepared statement of Mr. Meese follows:]

PREPARED STATEMENT OF EDWIN MEESE III

Good morning Mr. Chairman and Members of the Subcommittee and thank you for inviting me to testify at this oversight hearing on the Legal Services Corporation (LSC). For the record, I served as the United States Attorney General from 1985–1988; I am currently the Chairman of the Center for Legal and Judicial Studies at The Heritage Foundation.

The Heritage Foundation is a public policy research and educational organization operating under Section 501(c)(3) of the Internal Revenue Code. It is privately supported, and receives no funds from government at any level, nor does it perform any government or other contract work. In 2001, The Heritage Foundation received 93% of its funding from its approximately 200,000 individual supporters. The remaining 7% came from investment income, publication sales, and corporate contributions.

At the outset, let me make it clear that I believe in serving the legal needs of the poor, and the responsibility of the legal profession to ensure that no one goes without necessary legal representation because of the inability to pay. I have stood as a firm advocate for this position and have sought to promote public interest law throughout my professional career.

The issues before the subcommittee this morning, as I understand, relate to safeguarding the taxpayer-provided funding that has been made available to the Legal

Services Corporation through congressional appropriations, and to make sure that such funds are properly used for the legitimate purpose of providing legal assistance to low-income individuals in civil matters.

The Legal Services Corporation, formed by the 1974 Legal Services Corporation Act to provide publicly-funded, non-political legal services to poor Americans, has been a source of controversy since its inception. Over the years, evidence mounted that the Corporation was pursuing a political agenda at the expense of its original mission. In 1996, Congress attempted to refocus and reform LSC by adding specific statutory restrictions on political activities as a condition of further LSC funding.

More than five years later, it is now clear that the LSC Board of Directors, in spite of repeated assurances to Congress of its commitment to implement and enforce these reforms, has been either grossly negligent in its supervision or has chosen to obstruct them. A few examples are instructive, but by no means exhaustive, of the lack of proper controls.

In 1996, one of the primary targets of congressional reform was the use of legal services funds for lobbying instead of representation. That same year, Regional Management Corporation (RMC) filed an administrative complaint with LSC accusing legal services lawyers of improperly lobbying the South Carolina state legislature in violation of federal law and LSC guidelines. After LSC dismissed the complaint, RMC sought judicial review of the decision.

Judge Henry Herlong ruled that "LSC failed to fully investigate RMC's charges" and that "LSC did not have a rational basis for determining that [the LSC lawyers] did not violate federal law." [1] The judge pointed out that the alleged client had never requested such lobbying, that the legal services lawyer acknowledged that she had never spoken with the client about her lobbying efforts and was not familiar with any of the client's specific legal problems, and finally, that the alleged client was not even a current client of the legal services association when the lobbying occurred.[2]

LSC appealed the decision on the grounds that, as a private corporation, it is not subject to judicial review. The appeals court agreed and ruled that the protection of individuals harmed by illegal, LSC-funded lobbying depends entirely upon oversight by the LSC Board and "ultimately, congressional oversight." [3] Given the district court's findings, however, it appears that oversight by the current LSC Board amounted to no protection at all in this case.

The extent of misfeasance and failure to render accurate reports by LSC grantees has been documented by investigations conducted by the General Accounting Office. The credibility and integrity of the legal services program has been jeopardized by this failure of supervision and accountability, which is the direct responsibility of the LSC Board of Directors. The Board has an obligation to follow legislative mandates and to conduct the legal services program in accordance with the requirements that Congress has imposed.

In some cases, statutory controls have been effective only after initial attempts by the LSC to evade congressional mandates. For example, the 1996 statute prohibits recipients of LSC funds from charging attorneys' fees. The LSC Board implemented this restriction by drafting an interim regulation that allowed lawyers to charge attorneys' fees in cases involving poor, disabled clients in some SSDI cases. Only when they were chastised by their appropriations committee did the Board change the regulation and prevent legal services attorneys from keeping a portion of their poor clients' SDDI awards.

The requirements enacted by Congress have not always been so successful. In an attempt to reform the old system of grants that automatically refunded the same network of groups regardless of the quality or quantity of services provided to the poor, Congress required that grants and contracts for all basic field programs be subject to competition. The LSC Board responded to this requirement by setting up a competition administration that virtually guaranteed that there would be little or no competition for grants. A good measure of their success is that, since 1996, when competition was supposedly introduced, the vast majority of "competitions" have had only one applicant-the original program.[4]

Another blatant example of the LSC Board evading the clear intention of Congress has been in the representation of aliens who are not physically present in the

---

[1] Regional Management Corporation, et al. v. Legal Services Corporation, 10 F. Supp. 2d 565, 571 (D.S.C. 1998).

[2] Id. at 571–572.

[3] Regional Management Corporation, et al. v. Legal Services Corporation, 186 F. 3d 457 (4th Cir. 1999).

[4] Ron Sutherland, "The Government Provision of Legal Services For the Poor: Competition or Monopoly?" (unpublished paper).

United States. In spite of Congress's prohibition, an LSC recipient sent letters to a number of farmworkers in Mexico in 1998 and traveled there to recruit potential clients for lawsuits against American farmers who had participated in the U.S. Government's Agricultural Guestworker Program. When this illegal activity was uncovered by a watchdog group and congressional and media pressure were brought to bear, LSC cut off funding to the offending group. But the group merely reopened under a different name and were immediately refunded by the major LSC program in the state.

Following this public relations debacle, the LSC convened a special commission to determine the meaning of the phrase "is present in the United States." Incredibly, after a number of meetings behind closed doors, the commission determined that "is present" really means "is now or once was present" and allowed legal services grantees to continue representing aliens who live in foreign countries. Growers in Georgia, North Carolina, Kentucky, and elsewhere have been sued by aliens living in Mexico a year or more after those foreign nationals left employment in the states. Given the scarce resources that Congress mandated were to be provided for poor Americans, how can the LSC continue to squander taxpayer money on such illegal litigation? By pursuing such improper lawsuits, the LSC victimizes many farmers and other citizens who must incur major expenses in defending against litigation that should never have been initiated.

Another example of the LSC's Orwellian interpretation of its own restrictions involves Congress's prohibition of any LSC funds going to any individual or group that "initiates or participates in a class action." Despite this clear prohibition against class-action litigation, LSC grantees have filed class action suits in Georgia and California and LSC has taken no action to stop them. In dismissing complaints from Members of Congress and watchdog organizations, LSC maintained that the California action was not a class action but a "representative action" and, as such, did not fall under the congressional restrictions. As this Subcommittee knows, "representative actions" are the functional equivalent of class actions in several states. Indeed, both *Black's Law Dictionary and Ballentine's Law Dictionary* agree that "representative action" and "class action" are interchangeable terms. Apparently, Bill Clinton's artful definitions live on in the LSC Board members he appointed.

From these and numerous other examples, it has become clear that Legal Services Corporation remains uncommitted to reform, unaccountable to the courts, and unresponsive to Congress. It seems to me that the only remedy for the current situation, short of ending the entire funding, is for the President to nominate LSC Board members who are committed to the necessary reforms that will return the Legal Services Corporation to its original mission of serving the poor.

Thank you for your time and attention. I look forward to any questions you may have for me.

Mr. BARR. Thank you very much, Attorney General.

I would ask unanimous consent that we could proceed out of order here, in recognition of the fact that Mr. Meese has to leave to Chair a meeting on Homeland Security, and would ask if there are any Members that have specific questions that they would like to direct to Mr. Meese?

Mr. Watt?

Mr. WATT. I don't think I have any specific questions. I appreciate Mr. Meese being here. And if he needs to leave, I certainly have no problem with him going, especially if he's going to do Homeland Security. We need that.

I would just comment on the last "thumbs of the scales of justice" reference he made, and suggest to him that I thought that's exactly what we were trying to do, put the Federal Government's thumb on the scale of justice to try to equalize it a little bit. And I understand that sometimes when you get the thumb on the scale of justice, that thumb—that balance is very delicate, and an overstepping can make the scales unbalanced in the other direction.

But, certainly, I don't want to leave the impression that it was ever our intent not to have the Government's thumbs on the scale of justice. That's what my interpretation of the Legal Services Corporation is all about. There are people who have money who can

have access to the courts, and their thumbs, that money, gives them a thumb on the scale of justice that gives them an unfair advantage. And I thought our intent was to get the scale back into balance by putting the government's thumb on the other side of the scale.

Now, maybe I'm missing something here, but I just—that's not a question. I mean, I'm not trying to stop you from responding, if you want to respond. But I just wanted to make sure that a perhaps different perspective was expressed on that—what is it? Analogy. I never know what the term is. The "thumbs on the scale of justice," whatever it is that you used—metaphor. Yes, metaphor; that's the word. [Laughter.]

Thank you. I yield back.

Mr. MEESE. If I may——

Mr. WATT. Unless he wants to——

Mr. MEESE [continuing]. Respond just briefly, Mr. Chairman.

The whole idea, I think, of the legislation initially, which goes all the way back to the Office of Economic Opportunity in the 1960's through the Legal Services Corporation, is to fairly balance the scales. And the phrase "thumb on the scale" has always meant, in traditional commercial practice, that somebody is unfairly tipping the scale in favor of one side or the other. And that's what I was referring to.

Mr. WATT. I appreciate you clarifying that. So it sounds like we're all on the same—the same—same thumbs. [Laughter.]

Yes, thank you. I yield back.

Mr. BARR. I thank the gentleman.

General Meese, you did mention the rather Clintonian interpretation of the phrase "is present in the United States" with regard to representation of aliens. Are you aware of the fact that the deliberations that gave rise to that interpretation of the law was made in a closed-door session?

Mr. MEESE. I was not aware of the circumstances. I only know of the result of that decision being made.

Mr. BARR. Would that be, do you think, appropriate for decisions like that to be made not consistent with the Government in the Sunshine Act, for example?

Mr. MEESE. Well, since the LSC is a private corporation, there may be a legal question as to whether it's subject to the Sunshine Act. But I think certainly the spirit of the act should apply to the Legal Services Corporation because, obviously, when there is a corporation that has been created by Congress to represent the public interest, and particularly in the matter of legal matters, where there are two sides to most issues, I think it is important that policy decisions be made in full view of the public and particularly those people who may have an interest in the outcome, such as litigants against whom Legal Services attorneys may proceed.

Mr. BARR. As you know, General Meese—and already this morning, we've touched a couple cases, the *Velazquez* case and the *Dobbins* case.

A group called the Brennan Center, which operates out of New York University Law School, seems to be the driving force behind these cases. Are you familiar with the Brennan Center?

Mr. MEESE. I am vaguely familiar with them. I know a little bit about their work and also about their ideological proclivities.

Mr. BARR. Which would be what, in your experience?

Mr. MEESE. Extremely liberal in their viewpoint on the kinds of issues we're talking about today.

Mr. BARR. Thank you.

Are there—the gentlelady from California was not here earlier, but in light of the fact that former Attorney General Ed Meese has to leave to Chair a committee meeting on Homeland Security, we're taking questions out of order, if any Member has specific questions directed to Mr. Meese. And I would recognize the gentlelady from California for that purpose, if she has any questions.

Ms. WATERS. Thank you very much, Mr. Chairman. I appreciate that. And while I did not have the opportunity to hear all of the testimony, I know that Attorney General Meese has been concerned about the Legal Services Corporation, whether or not they were in compliance with the law that limits their ability to lobby and some other areas.

And I simply would like to say that those of us who represent districts where we have poor people in part of our districts—most of the districts are pretty diverse these days. But many of us have pockets of poor people. We're overwhelmed with requests by poor people for representation as it relates to landlord-tenant problems, as it relates to domestic violence, all of these issues. And we have nowhere to turn but to Legal Services.

I've always believed that because the Legal Services Corporation is in contact with all of these clients who desperately need services, that they understand a lot about what we do with public policy and how that public policy can help or harm citizens who need representation.

Do you believe that the Legal Services Corporation had any role to play in helping public policymakers understand how they can be of assistance to poor clients and not consider that the involvement of the Legal Services Corporation in helping us to do that should be considered lobbying? Is there any way, in your estimation, that that can be done?

Mr. MEESE. In my estimation, it cannot. And I think Congress has answered that question by forbidding lobbying. And the rationale behind that was that one group of citizens, no matter who they are, should not be given taxpayer-funded resources in which to lobby, if you will, or in which to try to influence the making of public policy. Most people in this country do not have any access, other than their own, if they should choose to testify—most people are not part of organizations that lobby Congress or that present information about public policy.

And so, in order to provide and to utilize the resources of the legal services that are destined and established specifically for low-income people to be used for the kinds of cases you mentioned, such as domestic violence, landlord-tenant and the like, it was the will of Congress that the resources be utilized specifically for that purpose.

Ms. WATERS. Well, I've always believed that they could save the taxpayers a lot of money by helping to shape public policy that would, in fact, be helpful to poor people and not, you know, place

the government in the position of paying even more money in trying to give assistance to them through the Legal Services Corporation.

And while you make a case that most people do not have lobbyists or representatives, when I look at agriculture, for example, and I look at all of the associations, and I look at how we subsidize agriculture in such tremendous ways, even though they are not direct payments to a particular organization, the subsidies that we give, whether it's in the ways that we legislate around sugar or any of the other products, I could make a very, very good case that we do indeed subsidize agriculture in so many ways with taxpayer dollars.

So I thank you for your testimony. And I am hopeful that, one day, we will be able to take the chains off of the Legal Services Corporation so that they can truly be of assistance to their poor clients, and that includes helping to bring information to the Members of Congress about how we can be more effective. And if you want to call that lobbying, then I guess that's what I support.

Thank you very much.

Mr. BARR. Thank you.

A vote has been called on the floor on appointing conferees on bioterrorism legislation, so we have just a few more minutes before we will be forced to break so Members can vote. If we could, I'd just like inquire of the distinguished gentleman from the Commonwealth of Pennsylvania if he has any particular question for General Meese.

Mr. GEKAS. Yes. The one area of concern now that seems to be almost insoluble to me in this whole situation is the lack of judicial review. What can we do? Can we pass a statute that would confer jurisdiction upon X appeals establishment to hear cases that now are not subject to judicial review?

Mr. MEESE. My opinion, kind of off the top of my head, Mr. Gekas, is that it would be possible for Congress in the act that establishes the Legal Services Corporation to provide a standing to sue by a person who is aggrieved in a lawsuit in which a grantee of the Legal Services Corporation has violated the regulations of that Corporation. That would be a way to, in effect, remedy the situation that was set forth by the appeals court in the case that I mentioned.

Mr. GEKAS. I have no further questions.

Mr. BARR. Thank you.

Does the gentleman from Arizona have any questions specifically for General Meese?

Mr. FLAKE. No.

Mr. BARR. Okay, thank you.

I would like to welcome the distinguished Ranking Member of the full Judiciary Committee, Mr. Conyers, from the great State of Michigan. And, Mr. Conyers, we have to break for a vote here, but did you have any—I'd like to, by unanimous consent, recognize you for any quick statement and if you have any question or comment for General Meese before he has to leave——

Mr. CONYERS. Thank you.

Mr. BARR [continuing]. To chair a meeting on homeland security.

Mr. CONYERS. Thank you, Chairman Barr.

I just wanted to welcome Congressman Erlenborn, from another period of time, who served with great distinction on the Education Committee. And I'm happy to see him here.

General Meese, it's always good to see you again. Let's end up on the same side of something once before this thing goes down, okay? [Laughter.]

Think there's a possibility? Let's try anyway.

Mr. WATT. We don't think it'll be lobbying Congress. We already eliminated that. Maxine already eliminated that. [Laughter.]

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. BARR. Thank you very much.

With apologies to all Members—all witnesses here today, we do have to break for a few minutes. We have just one vote, I'm informed, so it shouldn't be more than a few minutes.

We will stand in recess until the vote.

And since you'll have to leave us, General Meese, we very much appreciate your honoring us with your presence today, your expertise. I and other Members may have some questions to submit to you, if we could do that. And your responses to those and any other additional information will be made a part of the record, if you care to submit it.

Mr. MEESE. I'd be happy to do that, Mr. Chairman. And I thank you for your courtesy.

Mr. BARR. Thank you.

We stand in recess until Members have had a chance to vote.

[Recess.]

Mr. BARR. I'd like to reconvene our hearing. And, again, I apologize for the delay occasioned by the vote on the floor. We have been informed that that was the last floor vote for the day, so we should not have any further interruptions and can proceed with as much respect as possible for the very busy schedule that our three witnesses and certainly the other Members of the Subcommittee have.

And at this time, Mr. Erlenborn, again, it's an honor to have you here today. We appreciate your public service in so many areas, including as President and a member of the Legal Services Corporation. And we'll recognize for 5 minutes for your opening statement, sir.

STATEMENT OF JOHN ERLENBORN, PRESIDENT, LEGAL SERVICES CORPORATION

Mr. ERLENBORN. Thank you very much, Mr. Chairman.

I appreciate the chance to be here today to update you on the activities of the Legal Services Corporation and to report on our progress—I think it's on.

Can you hear me? Forward a little? Closer, okay.

Mr. BARR. These are the same microphones when you first elected to the Congress, you have to remember. [Laughter.]

Mr. ERLENBORN. These are the leftovers, I guess.

As I was saying, I'm happy to be here to report on our progress since our last appearance before this Subcommittee in 1999.

For 20 years I served the Congress and served also the House Republican Conference. Then and now I have balanced my support for Federally-funded legal services with my belief that Congress

ought to have a say in how Federal dollars are spent on civil justice efforts.

When I assumed the vice chairmanship of the LSC in 1996, I supported the restrictions passed by Congress and have worked diligently to ensure their enforcement. The Corporation has taken strong and unequivocal actions to address issues raised by members of this panel, and we have worked hard to successfully implement the will of the Congress.

Our national investment in civil legal assistance for the poor has been a source of much debate in Congress. But we reached a critical turning point in 1996 by enacting new restrictions on the activities of LSC grantees. Congress has reached a broad consensus for a strong Federal role in equal justice efforts.

Today, LSC enjoys the steadfast support of the Bush Administration, which has twice called on Congress to preserve our current funding levels even in the face of wartime budget constraints.

We at the Corporation appreciate the crucial support of Congress and President Bush. We pledge to continue to enforce and uphold the decisions of this body as we attempt to maximize our Federal investment in civil justice for the poor.

At the heart of this commitment lies our continued emphasis on preserving the integrity of the '96 reforms. As you know, LSC-funded programs are no longer allowed to file or litigate class-action lawsuits, engage in many types of lobbying, seek or receive attorneys' fees, litigate on behalf of prisoners or represent most undocumented aliens. The Corporation has not only enforced the restrictions passed by Congress; we have zealously defended them all the way to the U.S. Supreme Court.

In the *Velazquez* case, the Supreme Court struck down on a 5–4 vote on first amendment grounds the congressional ban on systemic challenges to the welfare laws. But more importantly, the Court left in place all the other restrictions on grant activity. In *Velazquez*, the Corporation proved itself to be a responsible regulatory agency committed to enforcing the will of Congress.

And, Mr. Chairman, today the Corporation stands ready once again to mount a vigorous offense—defense of the '96 reforms in the *Dobbins* case filed in December in Federal district court.

Since the *Velazquez* decision, the Corporation has undertaken great efforts to ensure that congressional restrictions are strictly observed.

LSC hired an additional seven investigators last year for our compliance and enforcement division. With a $2.2 million budget, this division is charged with investigating our grantees' adherence to all Federal regulations.

The compliance staff not only investigates inquiries from Members of Congress, the public, and those forwarded by the Corporation's independent inspector general, it enforces corrective action plans and implements sanctions where necessary.

The Corporation's management has taken strong action in those instances where grantees have failed to comply with the law or applicable regulations.

Fiscal sanctions will continue to be imposed where appropriate, including termination of a grant in its entirety.

The Corporation's strong focus on compliance has been matched by our diligent efforts to make the highest and best use of every Federal dollar.

Since 1996, the Corporation has used a competitive grant system to promote the most efficient and cost-effective delivery of legal services. Competition ensures the most-qualified applicant oversees the Federal investment to deliver assistance in every U.S. county and territory. Competition has also facilitated the growth of centralized intake systems, increased client self-help materials and more effective pro bono efforts.

Through our State planning—Mr. Chairman, it looks I ran out of time. But I think I lost a little of my time here with the——

Mr. BARR. We'll be glad to recognize you for an additional couple of minutes in order to certainly hit the highlights of your testimony. We think it's very important to get as much on the record as we can.

Mr. ERLENBORN. Thank you, Mr. Chairman.

Competition has also facilitated the growth of centralized intake systems, increased client self-help materials and more effective pro bono efforts.

Through our State planning initiative, the Corporation has radically changed the landscape of the national legal services delivery system. The Corporation now requires all grantees to participate in a local process to develop and implement a strategy to deliver high-quality legal assistance in every State.

Central to this change is a reconfiguration process that has streamlined the number of LSC grantees from 262 in 1998 to 170 by the end of this year. Many States have completely restructured their delivery systems. Every State, we feel, has improved access to justice for the poor and forged new and deeper bonds among stakeholders.

I would also like to report a series of steps that the Corporation has taken to address serious questions raised concerning the accuracy of case statistics submitted annually to our grantees. It's very important to note that it was the Corporation through our inspector general that first discovered and addressed this problem.

In conference with the leaders of the Corporation, the Inspector General and the Corporation began to address this problem of inaccurate figures.

We have offered additional training to program staffs and made substantial revisions in the case statistics handbook and now require all grantees to perform annual self-inspections of their caseload.

These efforts have been extremely successful. In 1999, the error rate was approximately 11 percent. In 2000, this figure dropped dramatically to 5 percent within the accepted statistical range of error.

In closing, I would like to say that LSC appreciates the ongoing support of this Subcommittee in helping carry out our mission of offering high-quality legal assistance to those who would otherwise be unable to afford it. Since passage of the '96 congressional reforms, the Corporation has instituted many of its own reforms aimed at meeting the twin goals of promoting access to justice and respecting Congress's wishes on the Federal role in civil legal aid.

We at the corporation have embraced our new vision with resolve and purpose, determined to help more Americans address their critical, basic legal problems.

Thank you, Mr. Chairman, in particular, for the additional minute or so.

[The prepared statement of Mr. Erlenborn follows:]

PREPARED STATEMENT OF JOHN ERLENBORN

INTRODUCTION

Mr. Chairman, and Members of the Subcommittee, Legal Services Corporation (LSC) welcomes this opportunity to report on our activities and discuss our FY 2003 budget request. Although we live in the world's wealthiest nation, there are more than 43 million Americans that are potentially eligible for LSC-funded services. To continue to ensure these vulnerable Americans are not completely shut out of the justice system, a strong federal role in supporting legal services continues to be vital.

LSC's FY 2002 budget is $329.3 million. LSC has 117 full-time staff, including 17 budgeted positions in the Office of the Inspector General. During this fiscal year, LSC will distribute $310 million dollars in federal grants to local, independent legal aid programs. Through its annual appropriation from Congress, LSC remains the single largest funding source of civil legal assistance in the country.

Programs receiving LSC funding help handle more than one million legal cases annually. LSC-funded programs are focused on serving the basic, critical legal needs of low-income clients. Ten percent of LSC clients are elderly; over 50 percent of all clients are women with young children. The most common types of cases are family, housing, income maintenance, and consumer law issues. Almost one-sixth of all cases involve efforts to obtain protection from domestic violence. Other case types frequently handled by LSC grantees include evictions, foreclosures, child custody and support, child abuse and neglect, wage claims, access to health care, and unemployment and disability claims.

To fulfill LSC's statutory mandate, the Board of Directors in January 2000 approved a set of "Strategic Directions for 2000–2005," a five-year blueprint for improving the delivery of legal services in America. The Board took this action guided by the belief that access to quality legal services is critical to a fair adversarial system of justice. Its twin objectives are to dramatically increase the number of low-income Americans who can access the civil justice system and to ensure that all clients receive quality legal services.

With a small and efficient staff, LSC management ensures accountability to Congress and the taxpayers through aggressive oversight and enforcement of federal law and other requirements. LSC also uses a competitive grant-making process to promote the highest and best use of federal dollars. Through our *State Planning Initiative*, LSC staff work with all grantees in every state to ensure our nation's poor receive high quality and appropriate legal assistance.

A. Grantee Oversight

In 1996, Congress enacted fundamental change to the national legal services program, reaffirming the federal government's commitment to providing free civil legal assistance to poor Americans. In order to refocus the LSC-funded system on individual clients with particular legal needs, Congress placed a series of new restrictions on LSC grantee programs. These new rules apply to all private and public funding received by an LSC grantee. LSC-funded programs are not allowed to file or litigate class action lawsuits, engage in many types of lobbying, seek or receive attorneys' fees, litigate on behalf of prisoners, or represent most undocumented aliens.

In recent years, LSC management, working with the independent LSC Inspector General, has developed a system of effective oversight for federally funded legal aid grantees. LSC has taken vigorous action to ensure compliance within applicable Federal law and regulations. Charged with this specific responsibility, LSC's Office of Compliance and Enforcement (OCE) has 12 attorneys on staff, three fiscal professionals, and one management professional. With approximately $2.2 million in budgeted funds for FY 2002, OCE investigates complaints and inquiries from members of Congress and the public, and follows up on referrals from LSC's Office of the Inspector General regarding possible violations discovered through compliance audits of local programs. The office also develops and enforces corrective action plans and recommends and enforces sanctions where necessary.

Further, as mandated by Congress in FY 2001, LSC hired an additional seven investigators for the Compliance and Enforcement Division to investigate grantee compliance with Federal regulations. To fully satisfy this mandate, LSC worked diligently throughout the beginning months of 2001 to fill all seven attorney/investigator positions. The selection process was completed by April 2001. Once hired, the new employees underwent an intensive phase of training and orientation to be fully prepared to conduct on-site reviews at LSC grantee offices.

Under the LSC system a principal mechanism for ensuring compliance is through each local program's financial statement audit, which includes a mandatory audit of compliance with LSC regulations. These audits are conducted by Independent Public Accountants (IPAs) according to guidelines established by LSC's Office of Inspector General (OIG). The OIG reviews the IPAs' audit reports and refers findings of non-compliance to LSC management for follow-up. LSC management determines the appropriate corrective action and enforces compliance, reporting back to the OIG on the steps it has taken. The OIG continues to track the progress of corrective action and enforcement. No case is closed without the OIG's agreement. In addition to the system of IPA audits, the OIG also conducts on-site audits of grantee compliance with particular restrictions and requirements. In addition, the OIG has developed a strategic plan that includes a series of operational projects, both mandatory and discretionary, to ensure grantee compliance. (See Section G).

LSC has made every effort to ensure that the congressional restrictions placed on grantees are strictly observed. Management has taken strong action in those instances when grantees have failed to comply with the law or LSC regulations. Fiscal sanctions have and will continue to be imposed where necessary and appropriate, up to and including termination of the grant in its entirety. Most recently, for example, LSC was forced to suspend 20 percent of a program's funding after its repeated failure to submit the required yearly audit to LSC's Inspector General. Another program was placed on month-to-month funding after questions surfaced involving accuracy of case counts and proper utilization of resources. We take very seriously the congressionally imposed requirements on our grantees and will continue to vigorously monitor them to ensure compliance.

B. State Planning Initiative

Through its *State Planning Initiative*, LSC has radically changed the landscape of the national legal services delivery process. Beginning in 1998, LSC has required all grantees to participate in a local process to develop and implement a comprehensive, integrated delivery system in every state. The *State Planning Initiative* requires that all grantees, working together with local stakeholders, develop an assessment of the strengths and weaknesses of every state civil justice system and formulate a plan to ensure that all clients within a state receive high quality legal assistance. The overall goal of this effort is to achieve the highest and best use of the federal investment in every state.

To date, the *State Planning Initiative* has resulted in significant and positive change in the delivery of legal services throughout the country. Central to this change is the ongoing retooling of existing systems that began in 1998. Through reconfiguration the number of grantees receiving LSC funding has decreased from 262 in 1998 to 207 in 2001. In 2002, LSC projects that there will be approximately 170 programs. Federally funded legal services programs continue to serve every county, city, and state in the nation.

In a recent publication entitled *Building State Justice Communities*, LSC reports on changes in the legal services delivery system, singling out 18 states for their model reform efforts. Many states completely restructured their legal services delivery systems. All improved access to justice for low-income people, strengthened the quality of service offered, and forged new and deeper bonds among stakeholder partners in their civil justice communities. Still other states increased their funding through innovative grant projects and local fundraising efforts.

One of the centerpieces of LSC's *State Planning Initiative* has been the implementation of technology as a way to reach more clients. Congress has supported this goal since 1999 with a three-year, $15.6 million technology investment for legal services. In 2001, LSC spread a record $7 million in hi-tech grants to 55 legal aid programs in 28 states through its Technology Initiative Grant program. Statewide legal services web sites, toll-free phone hotlines, sophisticated computer intake systems, touch screen computer kiosks, "virtual" law offices, video conferencing for clients, and online training for advocates were among the projects funded by LSC grants.

C. Competition

The statutory role of LSC is to manage and oversee federal funds that support the direct provision of legal services across the nation and U.S. territories. Since 1996, LSC has used a competitive grant-making system to promote the economical and effective delivery of legal services, as required by δ 1007(a)(3) of the Legal Services Corporation Act. LSC encourages local legal services providers and others to compete for available grants by broadly circulating information about the availability of grant funds through an aggressive public information campaign and through technical support provided to parties seeking to apply for LSC grants.

During the competition process, LSC evaluates applications according to established quality standards and awards grants to the applicants adjudged most capable of providing high-quality legal services in accordance with applicable legal requirements. LSC also uses the competition process to promote increased volunteer private attorney involvement *(pro bono)* and to expand public-private partnerships through which additional resources can be secured to supplement federal funding. During each grant period, LSC works with successful applicants to improve problematic areas identified in the competition process.

In FY 2002, the sixth year of competition for grants, LSC received grant applications from 103 applicants for 122 service areas in 26 states and the District of Columbia. There were multiple applicants for eight service areas. Competition decisions were made in November 2001. In addition, 83 current recipients whose grants were not up for competition this year were also subject to a grant renewal process to ensure their continued compliance with grant conditions.

Competition has resulted in improved legal assistance to our client community. First, it ensures the most qualified applicant oversees the federal investment to deliver legal assistance to low-income persons in each service area. Second, the competition process identifies strengths and weaknesses of programs. When necessary, programs are visited, short-term funding is established, and improvement efforts are undertaken. This process has led to significant change. In instances in which reform is not forthcoming, it has led to the replacement of providers. Third, LSC is developing the technological capacity to analyze application data in order to identify significant statistics and trends that are valuable in making grant decisions. Finally, competition has helped facilitate the growth of centralized intake systems, increased consumer education and self-representation, and more effective *pro bono* efforts.

D. Challenges to LSC Regulations

LSC continues to make every effort to ensure that the congressional restrictions placed on LSC-funded grantees are strictly observed. We have embraced that responsibility all the way to the United States Supreme Court, zealously defending the Constitutionality of each of the restrictions passed by Congress in 1996. In *Legal Services Corporation v. Velazquez*, by a vote of 5–4, the Supreme Court struck down on First Amendment grounds, the congressional ban on challenges to welfare laws in the context of individual cases and left standing all other 1996 restrictions on grantee activity. In *Velazquez*, LSC demonstrated it is a responsible regulatory agency committed to enforcing the will of Congress and committed to ensuring that federal funds are utilized in the manner mandated by Congress.

In the *Velazquez* ruling, the Supreme Court stated that LSC-funded attorneys can challenge the welfare reform law but only if it is part of the client's case for individual benefits. It is important to note that the Court did not strike down any other restriction imposed by Congress in 1996, and the *Velazquez* welfare decision will have no discernible impact on the vast majority of work done by LSC-funded programs.

Opponents of congressional restrictions on federally funded legal services recently filed another lawsuit against LSC. In *Dobbins v. Legal Services Corporation*, plaintiffs argue that the activity restrictions passed by Congress and signed by President Clinton are unconstitutional. Among the restrictions that plaintiffs challenge are the bans on class actions, collecting court-awarded attorneys' fees, representation of certain categories of aliens, and organizing and representing clients. Plaintiffs also challenge LSC's program integrity regulations. The Courts of Appeals for the 2nd and 9th Circuits have upheld the constitutionality of the restrictions being challenged by the *Dobbins* plaintiffs, and notably the Supreme Court declined to review either of those rulings when it denied certiorari in March 2000. Congress has made clear its intent on the 1996 restrictions, and LSC remains committed to enforcing the will of Congress.

E. Case Service Reports

LSC has acknowledged that serious questions were raised concerning the accuracy and validity of the case service report (CSR) data submitted annually by our grantees, and we have since undertaken comprehensive action to correct those problems. The accuracy problems stem, in part, from a lack of clarity found in past LSC reporting guidelines, and more generally, from insufficient attention by grantees to the existing reporting and documentation requirements.

Since we last testified before this body, LSC has answered—and, we hope, put to rest—the issues raised regarding the accuracy and validity of the Case Service Report (CSR) data submitted annually by LSC grantees. LSC has done its part to assure our grantees are provided with full and clear guidance on CSR reporting and that their case management systems comply fully with LSC's operational standards. LSC reissued its CSR instructions to all grantees, calling attention to problem areas known at that time. Recognizing that more action was needed to improve the CSR system, LSC provided additional training and issued further written guidance to LSC-funded programs, including substantial revisions to its CSR Handbook. We also now require all grantees to perform Self-Inspections of their CSR data on an annual basis.

It should be kept in mind that the issue has always been one primarily of grantee compliance with rules governing how and when to report their activities. In no instance has the Inspector General or the General Accounting Office identified any fraud or intentional misrepresentation by any grantee in the compilation and reporting of this data. LSC did not intentionally deceive or mislead Congress in order to secure increased funding, nor did it attempt at any time to hide from the public or Congress the problems that were emerging in the CSR system and LSC's efforts to correct these deficiencies. Rather, LSC views the issues concerning CSR data akin to those encountered by many government entities as they attempt to meet the goals of the Government Performance and Results Act (GPRA).

In September 1999, the General Accounting Office critiqued LSC's corrective actions by conducting a telephone survey with some 80 grantees. Based on the survey, the GAO concluded that certain policy areas required more clarification, that more effective communication and training on new CSR policies was required, and that the certification process could be improved by better sampling and more uniformity in the certification process. In its report to Congress, GAO made eight recommendations regarding LSC's CSR reporting system. As outlined in the chart on the following page, LSC has addressed GAO's recommendations in full.

LSC's Program Letter 2000–1 issued on January 14, 2000, contains the Self-Inspection instructions for 1999 cases and provides extensive case reporting guidance consistent with the GAO recommendations. Program Letter 2000–3 on April 28, 2000, outlines the amendments to the *1999 CSR Handbook*. The *1999 CSR Handbook—Revised* issued on May 14, 2000, includes the substantive changes to Case Service Reporting and incorporates other GAO recommendations. These three documents have been sent to all LSC-funded grantees.

LSC has provided continuous and aggressive guidance by following up with grantees where corrective action was necessary and by increasing its on-site presence to test grantee compliance with the CSR reporting process. These efforts have been extremely successful. In 1999, the CSR error rate was approximately 11 percent. This figure dropped dramatically, to five percent, in 2000. LSC believes that this positive change is attributable to three factors: (1) the ongoing clarification of requirements that occurred throughout 1999 with the issuance of the *Revised Handbook*; (2) continuous emphasis on the importance of proper documentation of cases reported to LSC; and (3) grantees' increasing familiarity with the new, more rigorous reporting standards.

GAO Recommendations
Case Service Report and LSC Compliance Activities

GAO Recommendation	LSC Activity
1) Clarify and disseminate information on specific client assets that grantees must obtain, record, and maintain.	Specific and simplified guidance on the required assets documentation is found in Section 5.4 of the *Revised Handbook*. The first paragraph the section lays out the minimum standards for asset documentation and specifies further conditions where family assets exceed program asset ceilings.
2) Clarify and disseminate information on the type of citizenship/alien eligibility information grantees must obtain, record, and maintain for clients who receive assistance over the phone.	LSC clarified telephone citizenship/alien eligibility information and implemented these changes in section 5.5 of the *Revised Handbook*. The first paragraph of Section 5.5 specifically addresses under what circumstances the reduced requirements for documentation of telephone assistance apply, and it outlines the necessary conditions.
3) Clarify and disseminate LSC criteria for the single recording of a case.	Most issues of duplication are fairly clear. When unclear, a judgment call based on the facts and procedural posture of the case must be made. After several attempts at issuing new guidance, LSC has avoided further attempts to explain a single-case recording based on the reasoned determination that a different set of instructions on case reporting would not reduce the number of arbitrary results that either multiply cases or eliminate legitimate cases unjustifiably.
4) Clarify and disseminate LSC policy concerning who can provide legal assistance to clients for the service to be counted as a case.	Section 2.3 of the *Revised Handbook* provides specific grantee guidance regarding who can provide assistance to clients. This guidance relates to the local rules of practice in the grantee's jurisdiction and includes a requirement that any staff member who is rendering such legal assistance in the capacity of any attorney or paralegal keep time under the regulatory requirements of 45 CFR 1635.
5) Explore options for facilitating correct and consistent understanding of reporting requirements.	Section IV of the *Revised Handbook* and Program Letter 2000-1, which contains the Self-Inspection instructions for 1999 cases, both provide extensive reporting guidance to grantees.
6) Develop a standard procedure for future self-inspections to ensure that grantees systematically and consistently report their results for open and closed cases.	LSC Program Letter 2000-1 provided a set of 12 areas of inquiry for the 1999 Self-Inspection of closed cases, including detailed instructions for results sampling, responses, and tallying. These instructions were used for the 1999 Self-Inspection process. Similar instruments were utilized for the 2000 and 2001 Self-Inspection processes. LSC concluded it was not financially feasible to pursue the verifying of open cases given resource and time constraints. Since all open cases must ultimately be closed, rigorous safeguards for counting closed cases will have the intended effect.
7) Direct grantees to select samples for future Self-Inspections that are sufficient to draw reliable conclusions on the magnitude of case data errors.	Since the 1999 Self-Inspection, LSC has directed larger programs to sample at least 150 closed cases. Smaller programs have been required to sample a minimum of 75 closed cases. This far exceeds the GAO's recommendation of sampling a minimum of 30 cases for each grantee.
8) Ensure that procedures are in place to validate the results of LSC's 1998 Self-Inspection, as well as any future Self-Inspection.	Upon release of the GAO Report in September 1999, LSC was already focused on the 1999 CSR and Self-Inspection processes. LSC chose to conduct the 1999 Self-Inspection to compel LSC grantees to correct figures before submission.[1] We believe that our success in diminishing the CSR error rate[2] is based upon the ongoing clarification of requirements that occurred throughout 1999 with the issuance of the *Revised Handbook*; LSC's increased emphasis on proper documentation; and programs' increasing familiarity with the new, rigorous reporting standards.

[1] The Office of Inspector General's (OIG) assessment of the 1999 CSRs, as mandated by Congress, re-validated the 1999 CSR Self-Inspection figures. The OIG's assessment resulted in a scientifically valid estimate of a thirteen percent error rate. This estimate is equivalent, within the statistical margin of error, to the eleven percent estimate LSC used based upon the error rate reported in the aggregate 1999 Self-Inspection sample.

[2] Using the same methodology as in 1999 for the 2000 Self-Inspection process, CSR error rate decreased significantly to an estimated 5 percent, showing significant improvement in the 2000 CSR statistics.

G. FY 2003 Budget Request

For FY 2003, LSC is seeking an appropriation of $329,300,000 to provide funding for civil legal assistance to low-income persons in the United States. This amount represents no increase from the FY2002 appropriation. This budget request is structured to allow LSC to continue to focus on three strategic goals: (1) to dramatically increase the availability of legal services to eligible persons, (2) to ensure legal services clients are receiving appropriate and high-quality legal assistance, and (3) to ensure that legal services programs fully comply with all legal requirements.

In FY 2003, LSC will allocate $310,000,000 in grants to local legal services programs in every state, county, and congressional district in the United States, as well as in Puerto Rico, the Virgin Islands, Guam, and Micronesia. The work of LSC-funded grantees continues to be a model of efficient dispute resolution. A very small percentage, approximately 10 percent, of LSC-funded cases is resolved by a court decision (and the vast majority of these are family law cases that require a court determination). Rather than litigating cases, legal services lawyers consistently find more

efficient ways to solve problems for their clients, such as brief advice, pro bono referrals, and the provision of self-help materials. This cost-effective approach is especially important because the need for legal services remains overwhelming. More than 43 million Americans are potentially eligible for LSC-funded services. Yet because of limited resources, local legal services programs are forced to turn away an estimated 80 percent of low-income individuals with critical legal needs, according to a benchmark 1994 American Bar Association legal needs survey.

In FY 2003, LSC will allocate $3,400,000 in FY 2003 to its Technology Initiative Grant program. As explained in Section B of this document, the TIG plan was designed to significantly increase access to legal information, self-help resources, and basic legal assistance for low-income Americans. The TIG program awards grants to eligible grantees through a competitive grant process, rewarding the most innovative and technologically proficient programs.

Only $13,300,000 of LSC's total FY 2003 requested appropriation is for Management and Administration. These funds allow LSC to fulfill its oversight and enforcement role as well as improve the national delivery system by reviewing program configuration and performance in every state—and by promoting program collaboration and/or consolidation to maximize services throughout the country. For FY 2003, LSC is seeking additional M&A funds to strengthen its capacity to ensure compliance with congressional restrictions enacted in 1996, to offset annual compensation increases and rental costs, and to continue to provide technical assistance to LSC programs on a wide range of issues.

The Office of the Inspector General is requesting $2,600,000 for FY 2003—an increase of $100,000 above its FY 2002 appropriation. The OIG has an explicit statutory role in the oversight of LSC grantees. LSC's FY 1996 Appropriations Act placed a particularly significant responsibility with the OIG—overseeing the monitoring of grantee compliance with congressional prohibitions and restrictions through IPAs' annual audit of grantees. This approach replaced the prior system of on-site checks by LSC management. This oversight responsibility includes development of guidance for the IPAs conducting the audits, review of their audit reports, referral of findings to LSC management for follow-up, and tracking the status of corrective actions. It also includes the OIG's on-site reviews of grantee compliance

The OIG has developed a strategic plan outlining a series of operational projects that were formulated based on the OIG's risk assessment of the legal services program. The risk assessment determined that the OIG should allocate a majority of resources to assessing compliance with the prohibitions and restrictions on LSC-grantee activities and to promoting the effectiveness of the legal services delivery system. The risk assessment indicated that the threat of significant monetary losses through fraudulent activities is low. Mandatory projects include the annual audit of LSC financial statements, investigations of crimes and referral of evidence for prosecution, and review of proposed legislation and regulations. The plan also includes activities aimed at the prevention and detection of no-compliance with statutory restrictions. The OIG plans to conduct six on-site audits of grantee compliance with program integrity requirements for separation of grantees from organizations that conduct prohibited or restricted activities. The OIG will review approximately 200 grantee audit reports, refer significant findings to LSC management, and track the progress of corrective actions. The OIG will continue to manage the audit follow-up process and maintain the Audit Guide and Compliance Supplement that provide audit instructions to the IPAs.

The OIG also will conduct discretionary activities. Among these are three audits of the private involvement attorney (PAI) program under which grantees devote 12.5 percent of their basic field grants to the involvement of private attorneys in the delivery of legal assistance. The OIG will also perform two technology grant audits and 20 audit service reviews (ASRs) and will continue its ongoing assessment of the application of information technology to the delivery of legal services.

CONCLUSION

We at LSC are proud of our partnership with Congress and appreciate the continuing support of the Bush Administration. We pledge to continue working with this Committee to improve the civil justice delivery system in America and to ensure federal dollars allocated for legal services are being spent in the most efficient and cost-effective manner possible.

Since passage of congressional reforms in 1996, LSC has been faithful to the will of Congress and steadfast in its commitment to uphold all new restrictions on our grantees' activities. Our strong focus on compliance has been matched by our diligent efforts to maximize the federal legal aid investment in every state and to help effect major reform where necessary. We have embraced our new vision with resolve

and purpose, determined to help more Americans access the civil justice system to address their critical, basic legal problems. Thank you, Mr. Chairman.

Mr. BARR. Thank you very much, Mr. Erlenborn.

At this time, I would like to recognize Mr. Boehm for 5 minutes for your opening statement, sir.

STATEMENT OF KENNETH F. BOEHM, CHAIRMAN, NATIONAL LEGAL AND POLICY CENTER

Mr. BOEHM. Thank you. Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to testify. I welcome the opportunity to testify because Congress deserves to know—thank you.

Congress deserves to know why the reforms its passed every year since 1996 have still not been carried out properly. The history of the Legal Services Corporation, as many of you know, has been a history of failed attempts to reform.

By 1996, Congress had had it. They used LSC's annual appropriations law to enact the most ambitious effort yet to reform legal services. They banned lobbying, class actions, attorneys' fees, drug-related evictions, prisoner representation, and other activities, and they required that LSC set up a competition for LSC grants.

The reforms had broad bipartisan support and have been passed every year since 1996. Clearly, Congress wanted LSC to reform. But it's just as clear that the LSC lawyers out in the field did not want that to happen. Legal Services lawyers filed a series of lawsuits against reforms, and, as has been noted, they've got one pending now.

The LSC board selected an outspoken critic of the reforms as LSC president in Mr. McKay. Immediately, the LSC began to weaken the reforms and Congress took note. Hal Rogers, Chairman of the Appropriations Subcommittee on LSC scolded LSC at one of their appropriations hearing, when they took the regulation, a draft regulation supposedly to ban all attorneys' fees as Congress requested, and put a loophole allowing attorneys' fees to be charged to the disabled poor in some SSDI cases.

Here's what Mr. Rogers said at the hearing: It's outrageous your interpretation would be that when you—considering all the hot water you're in.

But many outrageous interpretations were to come. LSC did quickly close that loophole. But they went on to other issues.

For example, LSC was supposed to ban all class actions with no exceptions. When Legal Services lawyers began filing class actions, complaints rolled in; LSC dismissed all complaints. Congress warned LSC to stop the class actions again, in House Report 106–680, accompanying LSC's 2001 appropriations. They said: "The Committee reminds the Corporation that its grantees are prohibited from participating in class actions and directs the Corporation to ensure its grantees comply."

LSC ignored that second warning and took no actions against the programs participating in class actions.

Growers in Georgia and California were forced to spend hundreds of thousands of dollars in legal fees, fighting illegal class actions, because LSC refused to enforce the law, even after being

warned by Congress in the House report. Some of the Georgia growers are here today.

Congress has banned representing aliens unless the alien is present in the United States—the exact phrase. LSC selected a special commission to decide what the meaning of "is present in the United States" was. The group met in secret in violation of the Government in the Sunshine law, which does apply to the Legal Services Corporation through the LSC Act, and produced an interpretation of "is present in the United States" that really meant "was present in the United States." This is Orwellian language at its worst.

Soon, LSC began dismissing complaints one after another without even bothering to check the facts. When a Federal judge found LSC had, "no rational basis for dismissing a complaint on illegal lobbying", LSC successfully argued on appeal that, as a private corporation, it was subject to judicial review. But LSC never disciplined the program that illegally lobbied.

Congress mandated no LSC funds could subsidize groups doing restricted activities and LSC groups must be physically and financially separate from groups doing restricted activity.

Here's how LSC interpreted that restriction. They said activist groups could work out of the same buildings, co-counsel on cases banned to LSC programs, oh, and the attorneys' fees could go to the activist group. That's their interpretation of physical and financial separation.

Then Congress mandated LSC put all grants up to competition. By any objective yardstick, this has become a farce. They set up competition on every LSC program, but program grantees are all but guaranteed that their grants will be renewed.

Congress has tried to reform LSC for more than 25 years. LSC does not want to be reformed. They've wanted competition, and it's now non-existent. They wanted lobbying stopped, and yet it's there. They wanted no class actions; warned them once in writing. LSC is still allowing class actions. On and on it goes.

Band-Aid approaches will do little to reform a fundamentally flawed program. The best Congress can hope for at this time is President Bush will appoint an LSC board committed to following the reforms, not undermining them. And in the absence of continuous oversight, a major reduction of LSC funding would undeniably cut down on abuses and perhaps convince the activists that thwarting the will of Congress does have a price.

Thank you.

[The prepared statement of Mr. Boehm follows:]

PREPARED STATEMENT OF KENNETH F. BOEHM

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify.

My name is Ken Boehm, and I'm Chairman of the National Legal and Policy Center (NLPC), a group that promotes open, ethical government through research, education, and legal action. Since 1994, NLPC has sponsored the Legal Services Accountability Project to document abuses within the legal services program. From 1989 to 1994, I served in senior management positions at the Legal Services Corporation. From 1991 to 1994, I was Counsel to the LSC Board of Directors.

I welcome the opportunity to testify today because Congress deserves to know why the reforms it enacted for the Legal Services Corporation have not been carried out.

The history of the Legal Services Corporation (LSC) is a history of failed attempts at reform.

Much of the debate in the U.S. House of Representatives in 1973 over pending legislation to establish the Legal Services Corporation dealt with restrictions to prevent a repeat of the political and ideological activities associated with the legal services program which existed under the Office of Economic Opportunity.

The controversies that have plagued the federal legal services program remain the same. The central criticism has been that activist lawyers have used the program to advance a political and ideological agenda.

The pattern of failed attempts to reform LSC continues to repeat itself. Legal services lawyers get involved in a number of controversial political or ideological activities. Following a public outcry, Congress enacts reforms. Legal services lawyers find ways to evade the reforms. There's a further outcry followed by more reforms. Legal services lawyers have always responded by finding new ways to block, dilute, and frustrate the reforms.

The core of the debate has always been two starkly different views of the mission of legal services. The activist view is that legal services is meant to push a more ideological agenda: fight welfare reform, support the expansion of welfare programs, and essentially run a politically motivated litigation effort using tax dollars to underwrite the operation. The other view is that legal services should steer clear of using government resources for political or ideological crusades and instead focus on providing traditional legal aid to help the poor with their day-to-day legal needs.

Sociologist Dr. Rael Jean Isaac noted this duality in her book examining how ideologues within legal services targeted farmers for harsh litigation tactics, *Harvest of Injustice: Legal Services vs. the Farmer*. She explained a pattern that exists to this day:

> "When they come to Congress for appropriations, they insist that their mission is that of traditional legal aid: to provide the poor with equal access to justice. This has proved a successful tack in preserving the Congressional funding spigot and in disarming critics, but leaves many in Congress feeling betrayed and misled when the program continues to behave like a political movement."

1996: CONGRESS ENACTS REFORMS AND RESTRICTIONS

In the House of Representatives FY1996 budget resolution, a 3-year phase out of LSC was proposed. Appropriations of $276 million in FY1996, $141 million in FY1997, and elimination in FY1998 was recommended.

The report of the House Budget Committee stated:

> "Too often, . . . lawyers funded through federal LSC grants have focused on political causes and class action lawsuits rather than helping poor Americans solve their legal problems . . . A phase out of federal funding for LSC will not eliminate free legal aid for the poor. State and local governments, bar associations, and other organizations already provide substantial legal aid to the poor." (H.Rept. 104–120)

The FY1996 appropriations law for LSC, Public Law 104–134, contained restrictions on activities. These restrictions were incorporated by reference in subsequent appropriations laws. While the LSC Act itself and previous appropriations laws had contained restrictions of various activities, the reforms enacted in 1996 were considered to be the most ambitious attempt in some time to reform the legal services program.

Under the current appropriations law, LSC grantees may not:

- engage in partisan litigation related to redistricting
- attempt to influence regulatory, legislative or adjudicative action at the federal, state or local level
- attempt to influence oversight proceedings of the LSC
- initiate or participate in any class action suit
- represent certain categories of aliens, except that nonfederal funds may be used to represent aliens who have been victims of domestic violence or child abuse
- conduct advocacy training on a public policy issue or encourage political activities, strikes or demonstrations
- claim or collect attorneys' fees
- engage in litigation related to abortion
- represent federal, state or local prisoners

- represent clients in eviction proceedings if they have been evicted from public housing because of drug-related activities
- solicit clients

Appropriations law also included reforms requiring that LSC set up a program of competition for LSC grants as a way to end the practice of presumptive refunding.

THWARTING REFORM

The reforms were largely opposed by legal services lawyers and supporters.

John McKay, a private lawyer who would later become LSC President, called the proposed reforms "so troubling" because they would ". . . micro-manage Legal Services to the point of being absurd." (The Seattle Times, Oct. 7, 1995, page A11)

Despite—or perhaps because of—his fervent opposition to the restrictions, the LSC Board selected McKay to succeed Alexander Forger as LSC President. Also, McKay had nominal Republican credentials deemed useful in working with the new Republican Congress. Equally important, McKay was to devote full time to the job of LSC President. Despite an LSC rule that its President not hold outside employment, Forger had drawn criticism for getting the LSC board, in closed session, to allow him to work on the multimillion dollar Jacqueline Onassis estate and the billion dollar Doris Duke estate while supposedly working full time as LSC President.

Radical activist lawyers were especially upset at the prospect of losing taxpayer-funded lawyers for their ideological efforts. David Cole, affiliated with the far left Center for Constitutional Rights, the group founded by William Kunstler, wrote a blistering attack on the reforms. ("A Shackling Compromise: How the LSC Sold Out the Poor; LSC Board Should Call Congress' Bluff," Legal Times, Jan. 27, 1997, page 27) Cole urged the LSC Board to take on Congress by strongly opposing the restrictions.

The problem with a frontal assault on Congress at that time was that funding for LSC was very much in jeopardy.

For the most part, Congressional supporters of LSC embraced the reforms, arguing that LSC should be given a chance to reform. In fact, no Congressman took any legislative action to strike the reforms and each annual debate on LSC funding featured supporters arguing that the reforms should be given time to work.

The House floor debate of July 23, 1996 on LSC funding showed strong support for the reforms by a bipartisan group of LSC supporters.

Rep. Alan Mollohan (D-WV) acknowledged past problems with LSC-funded lawyers in his own state, but called the reforms bipartisan.

Rep. Charles Stenholm (D-TX), an early supporter of the restrictions, called them "tough, smart." He cited the restrictions as essential to LSC serving its original purpose.

One critic of LSC, Rep. George Radanovich (R-CA), used the debate to focus on a key aspect of the restrictions:

> "Today's proponents of increasing funding for the Legal Services Corporation have spoken about restrictions placed upon the LSC in last year's appropriations bill. They claim that these restrictions have placed new limits upon the LSC and have forced it to act more responsibly. But these proponents have failed to note that the LSC is not a federal agency of the Federal Government, so Congress has no way of enforcing these restrictions. So, in effect, Congress is providing funding for the LSC, but we have no real control over this organization."

In light of LSC's numerous subsequent efforts to dilute or ignore the reforms enacted by Congress, Rep. Radanovich's analysis proved prophetic.

THWARTING REFORM: THE ROLE OF THE LSC BOARD

While LSC is a private corporation and not a federal agency, it conducts itself in ways similar to an agency. When Congress enacted the restrictions and reforms as part of the LSC appropriations legislation, it was up to the LSC Board to promulgate regulations. All eleven of the LSC Board members in office at the time the restrictions took effect were nominated by President Clinton. First Lady Hillary Rodham Clinton had a special interest in LSC, having served as LSC Chairman under President Jimmy Carter.

Under the LSC Act, the LSC Board has the ultimate authority for the management of the Corporation. The Board selects the LSC President as well as the Inspector General. The LSC President has hiring authority over LSC staff and plays a key role in how enforcement actions are conducted.

The record is clear that the LSC Board ought to undermine the Congressionally-mandated reforms by:

- using its regulatory authority to pass regulations weaker than Congress intended or with loopholes allowing activities which Congress sought to ban
- weakening the authority of the LSC Inspector General to have access to information from grantees in order to perform his duties under the IG Act
- using a "special commission" to recommend a major reinterpretation of federal law to allow representation of aliens who are not physically in the United States
- taking no action to ensure that LSC management enforced certain restrictions or administered reforms properly

THWARTING REFORM: THE ROLE OF LSC MANAGEMENT

Under the LSC Act, Congress gave LSC the sole authority "to insure the compliance of recipients and their employees with the provisions of the [Act] and the rules, regulations, and guidelines promulgated pursuant to [the Act] . . ." 42 U.S.C. 2996e(b)(1)(A).

By their terms, the statutory enforcement provisions permit, but do not compel, the Corporation to sanction violations of the Act or the Corporation's regulations. See 42 U.S.C. 2996e(b)(5); see also 45 C.F.R. 1618.5(b) (giving Corporation discretion to suspend or terminate funding after "attempts at informal resolution have been unsuccessful").

As the *Regional Management Corporation vs. LSC* federal case, discussed below, shows, a third party which is financially damaged by a violation of federal LSC restrictions by a lawyer or program funded by LSC has no judicial recourse if LSC fails to properly investigate or take proper administrative action. In the case cited, a company reported improper legislative lobbying by a legal services lawyer and complained to LSC. The investigation by LSC was so shoddy that it never even determined whether the legal services lawyer had a client for the lobbying, a clear requirement—one of several—for lobbying to be legal. The federal judge in the case cited the fact that the purported client of legal services had never asked the legal services lawyer to lobby the South Carolina General Assembly, and the lawyer admitted that she never spoke with the client about the lobbying.

LSC failed to even mention the client in its cursory decision to dismiss the complaint by Regional Management Corporation against the legal services program.

Even though the federal judge found ". . . the lobbying of the South Carolina General Assembly transgressed the clear language of federal law and LSC guidelines" and remanded the matter to LSC with instructions to fashion a proper remedy, LSC refused to sanction those who clearly broke the lobbying restriction.

Instead, LSC appealed the case, ignored the question as to whether the lobbying restriction was violated and argued that as a private corporation LSC was not subject to judicial review. LSC won on appeal because it is not subject to judicial review. In fact, this is yet another reason why LSC's critics have cited it as among the most unaccountable of federal programs.

The illegal lobbying incident is hardly isolated. Many individuals and groups which have complained to LSC about the conduct of legal services have found their complaints to be delayed and then dismissed with little apparent attention to the merits.

Because only LSC can enforce the LSC Act and regulations and because it is not subject to the judicial review which applies to virtually all federal agencies, LSC's failure to properly investigate or enforce the restrictions enacted by Congress means the restrictions are largely unenforceable.

But the situation is actually worse than that.

LSC has an Inspector General with limited powers to conduct fact finding investigations regarding alleged abuses. According to LSC Inspector General Edouard Quatrevauex, in a letter to Rep. Hal Rogers (R-KY), Chairman of the Appropriations Subcommittee with jurisdiction over LSC, on September 14, 2000:

> "Grant recipients have repeatedly denied the Office of Inspector General (OIG) access to information. Moreover, the actions of the LSC President and the Board of Directors have undermined the OIG by encouraging grantees to refuse to provide information to the OIG. Waiving its own statutory right of access, LSC management also has accepted denials of access to records when attempting to conduct its own compliance inspections, and acceded to ineffective inspection procedures suggested by the grantees being inspected."

Put simply, not only does LSC refuse to properly investigate complaints or enforce restrictions, but it has actively refused to conduct its own proper compliance investigations and took the steps noted in the letter above to frustrate any attempt by the Inspector General to get access to information needed to ensure proper compliance by programs.

Shortly after the Inspector General complained to Congress that ". . . it is no longer possible to conduct oversight activities efficiently and effectively . . ." in the letter just cited, it was announced that the Inspector General was no longer working for LSC. (Legal Times, Dec. 4, 2000)

The hasty departure of the LSC Inspector General so soon after he told Congress that the LSC President and Board of Directors had undermined his access to information by encouraging legal services programs to refuse him access to records underscores yet another reason LSC has been so unaccountable: the Inspector General serves at the pleasure of the Board that runs the program he is supposed to oversee.

THWARTING REFORM: THE ROLE OF LSC-FUNDED PROGRAMS

Many of the lawyers funded by LSC at the time Congress enacted the restrictions made it clear immediately that they were strongly opposed to the reforms.

A legal challenge to the reforms came in a lawsuit filed in federal court in Hawaii in January 1997 by five legal services programs. (*Legal Aid Society of Hawaii, et al. v. LSC*, 981 F. Supp. 1288 (1997)) The challenge to the reforms was defeated, appealed and defeated on appeal.

Opponents to the reforms also filed a broad challenge to the restrictions in federal court in New York. (*Velazquez v. Legal Services Corporation*, No. 97 00182 (E.D.N.Y. filed Jan. 14, 1997). While the challenge to most of the Congressional reforms failed, the Velazquez case went to the Supreme Court of the United States where the restriction against challenges to welfare reform was struck down in a 5–4 decision.

Activist lawyers opposed to the restrictions continue to mount legal challenges. In a case filed in late 2001 *(Dobbins v. LSC)* in New York, legal services programs and others are challenging the restriction against the use of non-LSC funds for restricted activities. While this same challenge was made in the LASH and Velazquez cases and defeated both times, the Dobbins case shows the determination of legal services activists to defeat reform.

The case underscores the attitude of legal services lawyers who view providing traditional day-to-day legal services to the poor as a waste of their time. These lawyers see the mission of LSC as funding a political and ideological agenda. Former legal services lawyer Mike Daniel spoke out against the attempts by Congress to redirect LSC back to traditional legal aid:

> "I don't know how you justify taking federal money to provide routine legal services. There are other lawyers who will do those services." (Dallas Morning News, Aug. 21, 1996, page 25A)

While critics of legal services have long contended the program has a political agenda, many legal services lawyers have candidly admitted the same thing. War correspondent and former legal services lawyer Geraldo Rivera acknowledged the political mission of legal services lawyers in his autobiography when he recalled that the New York program he worked for undertook "mountains of ideologically-motivated litigation." (*Exposing Myself*, by Geraldo Rivera, page 55, 1992)

Opposition to the reforms enacted by Congress by legal services lawyers is not limited to lawsuits. Cases such as the illegal lobbying of the South Carolina General Assembly by legal services lawyers illustrates another form of opposition: simply ignoring the restrictions.

Legal services lawyers know that only LSC can sanction them for breaking the rules and LSC has no interest in finding violations let alone punishing them. As previously noted, LSC's President and Board took the side of programs denying access to LSC's Inspector General when he was conducting his own oversight efforts.

Legal services lawyers also know that the Inspector General is principally a fact finder and that only LSC has the authority to sanction them for violation of the LSC Act and regulations.

Indeed, several of the major instances in which a program was caught violating the rules came from efforts of individuals in the Inspector General's office. The strategy of those who oppose the reforms is clear: prevent the Inspector General access to information and, if that fails, get a more compliant Inspector General.

LSC REFUSES TO ENFORCE LOBBYING RESTRICTION—
DESPITE RULING OF FEDERAL JUDGE

The *Regional Management Corporation v. LSC* case cited earlier demonstrates the brazenness with which LSC has sought to undermine the restrictions imposed by Congress in four important ways.

1. Complaints to LSC about programs violating restrictions can be ignored because there is no appeal and no judicial review.

   As U.S. District Judge Herlong pointed out when he ruled that there was no rational basis for LSC's dismissal of RMC's complaint:

   > "This short history of Polite's case, combined with the stern language in the LSC guidelines, demanded a more thorough investigation of this matter by LSC. Due to this failure to fully develop the factual record, LSC's decision that Berkowitz did not improperly lobby the General Assembly is without rational basis."

2. While LSC is legally correct that it is not subject to judicial review, the fact remains that Judge Herlong was correct that the lobbying of the General Assembly by a legal services lawyer in this case involves ". . . serious allegations that cut to the heart of the continuing controversy over the public funding of legal services for the poor."

   Judge Herlong put it bluntly, "Berkowitz's lobbying of the South Carolina General Assembly transgressed the clear language of federal law and LSC guidelines."

   The question is: why did LSC not enforce the restriction against lobbying?

3. If LSC believes it can ignore a clear violation of the lobbying restriction because it is not subject to judicial review, does this view extend to all other restrictions? This concern validates the view by Rep. Radanovich that LSC is not a federal agency "so Congress has no way of enforcing these restrictions."

4. If LSC can ignore the plain meaning of the restriction against lobbying and it can ignore the decision of a federal judge that there was no rational basis for the dismissal of the complaint about the illegal lobbying, what recourse is available for an individual citizen harmed by LSC's refusal to sanction legal services lawyers when they violate the restrictions?

REPRESENTING ALIENS OUTSIDE THE UNITED STATES:
LSC APPOINTS A "SPECIAL COMMISSION" TO REWRITE FEDERAL LAW
BEHIND CLOSED DOORS; LSC DETERMINES "IS" REALLY MEANS "WAS"

Did Congress ever intend for LSC-funded lawyers to represent aliens who are not present in the United States?

Of all the efforts by LSC and legal services lawyers to subvert reforms enacted by Congress, the effort by LSC to evade the longstanding requirement that no alien be eligible for legal assistance "unless the alien is present in the United States"—the exact language of the law—and meet certain additional requirements, has to be the most brazen.

The controversy began in early 1998 when a group of lawyers from Farmworkers Legal Services of North Carolina, an affiliate of Legal Services of North Carolina, took an illegal trip to Mexico to recruit clients to sue North Carolina farmers. A candidly shot video of the lawyers in action in a public square in Mexico lead to criticism of LSC at their February 1998 appropriations hearing, a call for an investigation by Rep. Charles Taylor (R-NC), and critical commentary on the editorial page of the Wall Street Journal.

LSC investigated and reported back to Congress that it was fining the farmworkers legal unit $17,000 (the cost of the trip) and defunding it. Superficially, it looked like LSC was taking appropriately strong steps to deal with a group of lawbreaking lawyers. It later turned out that all of the lawyers and staffers from the illegal trip simply joined a newly formed farmworker law unit which continued to receive LSC funds. A closer look at LSC's letter to the legal services group, obtained through a Freedom of Information Act request filed by the National Legal and Policy Center, revealed that the focus of the sanctions was for legal services rendered to Mexicans in Mexico who had never been to the United States.

Shortly thereafter, LSC announced that it would select a "special commission" to help the LSC board determine what Congress meant when it mandated that no alien could receive legal assistance "unless the alien is present in the United States." Legal services programs had been violating that provision for years by representing aliens who had come to the United States as agricultural guest workers

under the heavily regulated H-2A program. It was well known that legal services lawyers would travel to Mexico to recruit such clients to sue growers who used the H-2A program.

Despite the fact that the H-2A program was very popular with foreign workers and had provisions for housing, transportation, mandated wages, and was subject to inspection by a number of state and federal agencies, legal services lawyers had long viewed the program with disdain. It was felt that foreign workers who came to the U.S. for harvests, making many times what they would for similar work in their home country, were bad prospects for joining agricultural unions and the unions were longtime allies of the legal services lawyers.

The activist lawyers had a simple solution: sue as many farmers using the H-2A program as possible, making the already expensive program cost prohibitive. As it was, farmers had to pay a wage rate set by the government to equal or exceed the wages paid an American citizen for similar work plus the housing, transportation and other benefits. In addition to the inspections and oversight of the program at both the federal and state level, any farmer violating the rules ran the risk of being banned from the program—a financial death sentence for farms with labor intensive crops.

As might be expected, foreign workers competed to be accepted in the program, sometimes paying recruiters to be accepted. As a result, H-2A guest workers were poor prospects for joining unions or joining trumped up lawsuits. While legal services are quick to cite their overcrowded waiting rooms, there was a real shortage of H-2A clients. So the activist lawyers decided to go to Mexico to recruit past H-2A workers.

The tactic of undercutting the H-2A program by recruiting clients in Mexico among workers who had previously worked in the H-2A program seemed to work. Until the videotape.

The "special commission" appointed by the LSC Board to struggle with the best way to change the plain meaning of the legislative language was handpicked to exclude anyone representing agriculture or, for that matter, anyone who might dissent from the effort to provide window dressing for the LSC Board's intention of finding a way to justify the representation of aliens outside the United States.

The group had two public hearings then went into secret session despite the fact that LSC has always been subject to the Government in the Sunshine Act. Predictably, the commission issued a report which argued that Congress could not possibly have meant that there be no legal assistance for any alien "unless the alien is present in the United States." They, in effect, argued that "is" really must have meant "was" and therefore any alien who was previously in the United States as a guest worker is eligible for legal assistance.

Just as predictably, the LSC Board agreed to this absurd construction. Left unsaid is just where in the Constitution did the LSC Board find their authority to change the plain meaning of a federal law.

The relevant language of the LSC appropriations law, as set forth in Section 504(a)(11) of Public Law 104–134 is quite clear:

> "Sec. 504
>
> (a) None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as "recipient")—
>
> . . .
>
> (11) that provides legal assistance for or on behalf of any alien, unless the alien is present in the United States and is—
>
> . . .
>
> (E) an alien to whom section 305 of the Immigrant Reform and Control Act of 1986 (8 U.S.C. 1101 note) applies, but only to the extent that the legal assistance provided is the legal assistance described in such section;

The physical presence of the alien in the United States is the necessary precondition for any legal assistance.

The phrase "is present in the United States" was meant to condition eligibility for legal assistance to aliens present in the United states when legal assistance is being rendered. "Canons of statutory construction dictate that if the language of the statute is clear, we need look no further than the language in determining the statute's meaning." United States v. Lewis, 67 F.3d 225, 228 (9th Cir. 1995) (citing Sullivan v Stroop, 496 U.S. 478, 482 (1990))

Nothing presented by the LSC "special commission" came even close to providing any evidence that the presence requirement contained within the appropriations law

was meant by its authors to allow legal assistance when the alien is not present in the United States.

First, LSC's own briefing paper contained in the materials presented at the February 2, 1999 meeting of the LSC commission, Restrictions on Legal Assistance to Aliens: Legal Background, stated:

> "Under current law, LSC recipients may provide legal assistance to an alien if the alien is present in the United States and falls within one of several designated categories. See Pub. L. 104–134; and 45 C.F.R. Part 1626"

The same LSC briefing paper goes on to admit that:

> ". . . nor is there any indication in relevant legislative history to indicate that the term should not be given it plain meaning which is actually be physically in the United States."

Well stated and totally correct.

But very inconvenient for those who wanted to provide legal assistance at taxpayers' expense to aliens not physically in the United States.

Even Texas Rural Legal Aid (TRLA), one of the programs caught providing legal assistance to aliens outside the United States, was hardpressed to find any legislative history supporting the "is really means was" school of thought at LSC. The TRLA statement contained in the public record of the commission, before it went into secret session, states:

> "There appears to be no instructive legislative history on the meaning of "is present" as used in the legislative rider in 1986 nor in any of the other years in which it has appeared in the appropriations acts (1984 to present)."

Finding nothing whatsoever in the legislative history of the appropriations rider to support the view that Congress meant "is present in the United States" to mean "is or was present in the United States," TRLA's statement went on to attempt to argue that the 1986 Immigration Reform and Control Act (IRCA) somehow dictates that the plain meaning of the subsequent appropriations rider should not be followed This view of statutory construction is based on the absurd and insupportable notion that Congressional appropriations riders do not have the legal authority to curtail an interpretation of prior statutory law. In reality, riders to appropriations laws routinely curtail activities which in prior fiscal years may have been permissible. To find examples of this, one need look no further than the restrictions of legal services activities which were first set forth in Public Law 104–134.

Despite the novel view, implicit in TRLA's analysis, that appropriations riders passed by Congress may not restrict activities that may have been previously allowed by a program that receives federal funds, no legal analysis whatsoever was provided by TRLA or any other participant to support this view.

Even if the language in IRCA explicitly allowed legal services lawyers to provide legal assistance to aliens who are not present in the United States at the time of that assistance, and IRCA clearly does not contain such language, nothing would prevent Congress from exercising its appropriations authority under Article I of the Constitution from withholding funding for activities which had previously been allowed.

For LSC to take the view that Congress does not possess the authority to use appropriations riders to restrict activities by legal services lawyers is tantamount to LSC endorsing the view that it has the authority to pick and choose which of the restrictions imposed by Congress it will enforce.

The argument that Congress may not amend substantive law in an appropriations statute is flatly contradicted by a 1992 Supreme Court decision which explicitly found that Congress ". . . may amend substantive law in an appropriations statute . . ." *Roberts v. Seattle Audobon Society*, 112 S. Ct. 1407, 1414 (1992).

The results of LSC's decision to allow representation of aliens outside the United States has been predictable. Programs which have long had reputations for political activism embraced the opportunity instead of addressing traditional day-to-day legal needs.

It should come as no surprise that the two programs which have paid the largest fines for violating LSC rules in the recent past, Texas Rural Legal Aid and Legal Services of North Carolina, have both decided to use their scarce resources to represent aliens outside the United States. The result is that the deserving poor within their own service areas are short-changed.

Anyone who thinks that these more expensive foreign cases are serving the interests of justice should take a closer look at the cases. Despite the fact that many farmers who cannot afford to pay the expense of defending a lawsuit and are forced to settle when legal services file trumped up or bogus claims, farmers in North

Carolina, fed up with the shakedown brand of justice practiced by legal services lawyers, decided to go to trial on one of the cases decided since LSC decided it could pretend it was Congress and rewrite federal appropriations law:

Franco-Favela v. Leonard Wester and Wester Farms

This case was heard in Franklin County District Court on July 30, 2001. This was a contract case brought by one of the LSC-funded lawyers involved in the illegal Mexican recruiting trip. The client was a Mexican citizen currently in Durango, Mexico. The client signed a voluntary resignation form in Spanish and English in August 1996 but the case was not filed until July 1999. The claim that the client was fired for not meeting a production quota in bell peppers was inconsistent with the fact that bell peppers were a minor crop and all employees picking them were paid an hourly wage. The plaintiff admitted the signature on the voluntary resignation form was his but he had forgotten the circumstances under which he had signed it. There was no evidence that Wester farms coerced or intimidated the client into signing the form. The judge hearing the case ruled that "plaintiff's claims against defendants lack merit." The claims were dismissed in their entirety with prejudice and the judge further ruled that plaintiff shall recover nothing from defendants.

Ironically, Legal Services of North Carolina, while pursuing meritless claims like the one above on behalf of an alien client living in Mexico five years after the client left North Carolina, recently argued to the North Carolina legislature that it needed more funds to meet the unmet legal needs of poor North Carolinians. Perhaps if the program was recruiting clients in Mexico for meritless cases, it might have been able to meet more legal needs of the deserving poor in North Carolina.

CONGRESS REQUIRES COMPETITION FOR LSC GRANTS BUT LSC SETS UP SYSTEM TO FRUSTRATE COMPETITION

One of the most important reforms enacted by Congress through the 1996 LSC appropriations law was the requirement that LSC implement a system of competition for the award of all grants to field programs.

For years, LSC grantees received their grants through a system of presumptive refunding. The funds were simply awarded to the incumbent program in almost every instance without any regard to whether the program was doing an excellent job or a miserable job.

Quality did not count. Being the incumbent program was all that mattered.

Law Professor Douglas Besharov studied the quality and quantity of legal services provided with LSC funding in his 1990 book, *Legal Services for the Poor: Time for Reform*. He concluded that efficiency among grantees varied widely and LSC's own data suggested "a substantial decline in productivity." (ID. at vx)

Dr. Besharov identified one of the sources of the mediocre levels of efficiency as the automatic refunding process:

> "Unlike most federal programs, LSC grantees are all but guaranteed refunding. Unfortunately, ensured refunding removes an important incentive for greater efficiency and responsiveness."

Congress mandated that LSC set up the program of competitive bidding for grants with the clear understanding that it did not want a sham process that merely mimicked the failed policy of automatically granting money to existing programs.

To reinforce this view, Section 503(a)(3)(e) of Public Law 104–134 stated:

> "No person or entity that was previously awarded a grant or contract by the Legal Services Corporation for the provision of legal assistance may be given any preference in the competitive selection process."

Despite this language, the LSC set up a competition program that did just the opposite of what Congress intended.

The facts speak for themselves.

Ronald Sutherland, Adjunct Professor of Law at the George Mason University School of Law, has produced an excellent study examining LSC grant competition *(The Government Provision of Legal Services for the Poor: Competition or Monopoly)*. While the study also addresses broader issues regarding the ineffectiveness of delivery of legal services for the poor, his analysis of six years of purported competition at LSC shows beyond all argument a system that thwarts competition.

Sutherland's analysis of LSC's competition found that, with few exceptions, grants are awarded in competitions which feature just one bid—the incumbent program.

The LSC board, management, and field programs were all opposed to competition but there was a political necessity to set up a facade of competitive bidding. LSC

set up the program, made the necessary announcements in the federal register, and ran the program for six years in a way that virtually guaranteed that incumbent programs almost always won in the very few cases there was even a competitor.

Any law firm, legal group, faith-based group or charity which entertained an idea of competing for a LSC grant quickly learned what happens when you challenge an incumbent legal services program.

The very first successful challenge to legal services programs for a LSC grant was by the Philadelphia area law firm of Dessen, Moses & Sheinoff. This firm successfully competed for grants held by two LSC-funded programs: Montgomery County Legal Aid and Delaware County Legal Assistance. ("Law firm awarded federal legal aid grant," The Legal Intelligencer, Feb. 25, 1997, page 1)

Then the situation turned ugly.

The new group, which won the competition despite the tremendous bias of the competition process for existing programs, soon found itself picketed by legal services lawyers from the losing programs.

One of those lawyers, Roger Ashodian, President of the Delaware County Legal Assistance, called on Dessen, Moses to withdraw its winning bid. This is the same attorney who in 1992 had been sanctioned by a judge for engaging in unethical tactics to increase litigation costs in a lawsuit that had been filed against a non-profit group that had provided affordable housing to the poor. (*Cottman v. Flower Manor*, Civ. A No. 91–4890, 1992 WL 368457 (E.D. Pa. 1992))

The losing programs mounted a campaign of political pressure to force the winning firm to withdraw its bid. The losing programs convinced their Congressman to attend a LSC board meeting in January 1997 to try to overturn the award.

Then the winning firm found that one of its biggest clients, the Philadelphia Federation of Teachers, did not support the action. The legal service program's unionized staff had apparently persuaded the teachers' union to throw its weight against the winning bid.

The Legal Intelligencer (Mar. 19,1997) summed up the firm's decision in a story entitled "Concern Over Client Led to Dropping Legal Aid Grant."

> "A desire not to 'embarrass' a major client, combined with a public protest by legal service union members, led the center city-based firm Dessen, Moses & Sheinoff to withdraw from a grant to take over legal aid services in Montgomery and Delaware Counties."

The lesson was that any attempt to allow true competition based on quality legal services would be met with political pressure, demonstrations, and economic pressure.

Today, there is nothing even remotely resembling the competition that Congress mandated.

LSC VICE PRESIDENT ADMITS ANOTHER OF LSC'S "DIRTY LITTLE SECRETS"—POOR QUALITY LEGAL SERVICES

Congress mandated competition for LSC grants in an attempt to promote incentives for better quality legal assistance. As just noted, six years of pseudo-competition where almost every program, no matter how mediocre, gets its grant renewed has produced exactly what existed before: many low quality programs—the "deadwood" described by Dr. Besharov in *Legal Services for the Poor: Time for Reform.*

This lack of quality manifests itself everywhere, even in candid assessments by current LSC officials. Randi Youells, LSC Vice President for Programs addressed the quality issue directly in a paper presented to the International Legal Aid Group which convened in Melbourne, Australia, July 13–16, 2001:

> "Unfortunately, at the same time we have held ourselves out as the champions of quality, we have also tolerated the existence of legal services programs that we know are functioning below appropriate levels. That reality has been one of our "dirty little secrets." It has also been our "Achilles" heel in that it has allowed our adversaries—the people who oppose the very idea of federally funded legal services—to chip away at our financial and political support." (International Legal Aid Group paper, page 13)

CONGRESS STRICTLY FORBIDS CLASS ACTIONS; LSC ALLOWS CLASS ACTIONS

When Congress banned legal services lawyers from class actions as part of the FY1996 LSC appropriations law, the restriction was short, unambiguous and without exception:

"None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred 1to in this section as a "recipient")—

. . .

(7) that initiates or participates in a class action

(Public law 104–134, section 504(a)(7)

Congress enacted the ban after years of abuses by legal services lawyers using class actions to advance political and ideological agendas. Not only were such class action lawsuits among the most controversial but they were also costly and diverted resources from the day-to-day legal problems of the poor.

Prior to the restriction, legal services lawyers used class action lawsuits to:

- challenge Atlanta Housing Authority's policy of denying housing to persons with criminal backgrounds (*Bonner v. Atlanta Housing Auth.*, N.D. Ga., Oct. 1995).
- sue Pennsylvania when Governor Casey cut off some welfare benefits to able-bodied adults if they had no children and were fit to work (Legal Intelligencer, Aug. 4, 1994).
- participate in an unsuccessful lawsuit against Michigan for failing to provide free lawyers to prisoners for child custody cases (Glover v. Johnson, 75 F.3d 264, 6th Cir. 1996).

Moreover, many types of class actions which might truly benefit the poor did not require legal services lawyers because private law firms were eager to take such cases because of the attorneys' fees involved.

Despite the plain language of the restriction against class action lawsuits by LSC-funded lawyers and the lack of any exceptions to that restriction, legal services lawyers have filed class actions against farmers in both Georgia and California.

In the Georgia case, Georgia Legal Services filed a lawsuit against the Georgia Growers Association, Southern Valley Fruit and Vegetable, Inc., and Hamilton Growers, Inc.

The clients were five Mexican citizens living in Michoacan, Mexico, who had traveled to Georgia as part of the H-2A temporary agricultural worker program in April 1998, more than a year prior to the filing of the complaint by Georgia Legal Services.

Georgia Legal Services asked the court to grant judgment not only for the five named clients but for a large unidentified number of "others similarly situated." Throughout the complaint, the legal services lawyers asserted claims for the unidentified large group of "others similarly situated."

The legal services lawyers also requested that the court let the action proceed with Georgia Legal Services representing the large unidentified group. From the motion it was apparent that they wanted to represent as many as 335 aliens in a class action.

The lawyers for the growers submitted a memorandum to the court in opposition to the attempt to proceed as a class action. The memorandum addressed the appropriations law restriction against class action as follows:

"Congressional Restrictions on this Litigation

> As reflected in the proposed notice, plaintiffs are represented by Legal Services attorneys. Congress prohibits Legal Services Corporation (LSC), and those organizations taking their funding from LSC, from undertaking a class action, directly or through others. 42 U.S.C. 2996e. Public Law 104–134 made this a strict prohibition and LSC recognized the "clear prohibition" on this activity in the preamble to 45 C.F.R. Part 1617. 45 C.F.R. 1617.3 now prohibits Legal Services from initiating or participating in a class action with no exceptions. While "class action" is defined by LSC with reference to Rule 23, it also extends to class actions pursuant to "rule of civil procedure applicable in the court in which the action is filed." While this class action is not brought pursuant to Rule 23, it remains a federal court class action. See, e.g. Grayson, supra (repeatedly referring to such cases as class actions). Thus, as held in *Brooks v. Bellsouth Tel. Co.*, supra, while these "class actions . . . do not proceed under Fed. R. Civ. P 23 . . . section 16(b) of the Fair Labor Standards Act . . . provides procedures for representative or class actions." The bottom line is that LSC attorneys seek to represent 335 persons in a class action, despite a Congressional prohibition."

The class action lawsuit being pursued by Georgia Legal Services had other important violations of the Congressional restrictions.

Congress had sought to eliminate a longstanding pattern of abuses in which legal services lawyers would fail to identify their clients. The 1996 reforms contained in Public Law 104–134 set forth this requirement as follows:

> "Sec. 504
>
> None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as a "recipient")—
>
> . . .
>
> (8) that files a complaint or otherwise initiates or participates in litigation against a defendant, or engages in a precomplaint settlement negotiation with a prospective defendant, unless—
>
> (A) each plaintiff has been specifically identified, by name, in a complaint filed for the purposes of such litigation or prior to the precomplaint negotiation; and (B) a statement or statements of facts written in English and, if necessary, in a language that the plaintiffs understand, that enumerate the particular facts known to the plaintiffs on which the complaint is based, have been signed by the plaintiffs, are kept on file by the recipient, and are made available to any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and to any auditor or monitor receiving federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation . . .

In the Georgia case, not only were the identities of each plaintiff not provided, it's abundantly clear that Georgia Legal Services didn't even know the identities of those "similarly situated" who it was purporting to represent.

As such, Georgia Legal Services violated this federal appropriations law restriction by both failing to identify all plaintiffs and by failing to have gotten from this large group of unknown plaintiffs a statement of facts. Moreover, the time for such disclosure is at the filing of the complaint or prior to precomplaint negotiation, not halfway through the case.

The tactics of Georgia Legal Services in this case fit the controversial modus operandi which has all too often accompanied legal service lawsuits against farmers. This approach has been documented in Dr. Rael Jean Isaac's *Harvest of Injustice: Legal Services v. the Farmer* published by the National Legal and Policy Center as well as in hearings ably led by Representatives George Gekas (R-PA) and Roscoe Bartlett (R-MD) in recent years. The chief tactic is to force farmers to settle flimsy and even non-existent claims by simply running up the legal bill to fight the lawsuit.

Filing class action lawsuits and failing to identify hundreds of plaintiffs clearly violates Public Law 103–134, but it is a tactic designed to force farmers to settle trumped up claims or face financial ruin through legal bills.

Among the trumped up claims was the claim that farmers were somehow responsible for reimbursing workers for passports purchased by workers in their own country long before a contract even existed. The claim was totally without merit. In the world of legal services litigation, it doesn't matter that the allegations are nonsense. What matters is that the case is so expensive to litigate that farmers will settle just to avoid the costs of litigation.

In the case of Georgia Growers Association, abusive litigation has cost it hundreds of thousands in legal bills.

On a bipartisan basis Georgia's House delegation and Senators spoke out against the abuses. Rep. Saxby Chambliss (R-GA) and the late Senator Paul Coverdell (R-GA) wrote to LSC to complain about the tactics of Georgia Legal Services. Senator Zell Miller (D-GA) in a statement entitled "Agriculture: Georgia's Top Industry; My Top Priority," specifically identified the Legal Services Corporation as challenging Georgia farmers. He added, "I have learned that Washington has not always been a great friend to our farmers."

Despite an outcry from the growers, a complaint against Georgia Legal Services by the National Legal and Policy Center citing multiple violations of the restrictions enacted by Congress, and protests by Congressmen and Senators, LSC did nothing to rein in the rogue program.

LSC knew that only LSC had standing to enforce the restrictions and that any administrative decision they made dismissing complaints was not subject to judicial review.

In short, LSC and its grantees were above the law. For an institution which never tires of instructing Congress that the court house door should not be shut to the lawyers for the poor, they were in a situation where they were routinely shutting the door to justice for anyone who wanted the reforms enforced.

Class actions by legal services lawyers were not limited to Georgia. In California, farmers faced a series of class actions by legal services lawyers. In a case filed by California Rural Legal Assistance (CRLA) before the Ventura County Superior Court in February 2000 *(Lilia Tello, et al. v. Agricultural Innovation and Trade, Inc., et al.),* CRLA asserted claims for not just the named plaintiffs, but also a class of unidentified "members of the general public." CRLA subsequently described this class in the complaint as "each similarly employed member of the general public." The size of the class was not given and none of its members were identified by name, despite the explicit requirement of federal appropriations law cited above for naming all plaintiffs in any complaint brought by lawyers funded by LSC.

As noted, both the federal law and LSC's own regulation on class actions, 45 C.F.R. 1617 have no exceptions to the restriction against initiating or participating in a class action.

Nor is there any dilution of the broadness of the restriction in the definition of class action at 45 C.F.R. 1617.2, which covers not only class actions pursuant to Rule 23 of the Federal Rules of Civil Procedure, but also "comparable State statute or rule of civil procedure applicable in the court in which the action is filed."

Legal services lawyers undertaking the California class actions and their defenders at LSC have tried to argue that the California actions were representative actions and not class actions.

Should there be any doubt as to whether a representative action in which legal services attempts to represent a class of unnamed individuals is a violation of the broad restriction against class actions found in both the law and the regulations, one can turn to *Ballentine's Law Dictionary* to review what that authoritative law dictionary has to say on the subject. The definition is remarkably unambiguous:

> *representative action*. same as *class action*.

That definition does not allow any discernible wiggle room for an attempt to argue that a representative action is not a class action.

Similarly, *Black's Law Dictionary* provides no grounds for claiming a representative action is not a class action:

> *CLASS or REPRESENTATIVE ACTION*. One in which one or more members of a class sue either for themselves or for themselves and other members of the class. *Huester v. Gilmour*, D.C. Pa, 13 F. Supp. 630, 631; *City of Dallas v. Armour & Co.*, Tex. Civ. App., 216 S.W. 222, 224

Nothing could be clearer. A representative action is a class action. Congress restricted such actions.

When the above case brought by CRLA was brought to the attention of LSC through a complaint filed by the National Legal and Policy Center, Underwood Ranches and Tierra Linda Corp., LSC simply dismissed the complaint. They also dismissed a second complaint involving another class action by CRLA. LSC knew from the *Regional Management Corporation v. LSC* case that it didn't matter if there was no rational basis for LSC's dismissal of a complaint.

The lesson of *Regional Management Corporation v. LSC* for LSC has been that complaints about legal services lawyers violating restrictions imposed by Congress can be summarily dismissed by LSC and the complainants have no right to seek judicial review of the dismissal.

After all, if LSC could ignore a federal judge who found a clear transgression of the federal law against lobbying, it could ignore anyone.

CONGRESS WARNS LSC TO ENFORCE CLASS ACTION BAN; LSC IGNORES CONGRESS

In 2000, as reports of legal services lawyers again violating Congressional restrictions—and LSC again failing to take any action—reached Congress, members of the Committee on Appropriations placed the following language in House Report 106–680:

> "The Committee also reminds the Corporation that its grantees are prohibited by section 504(a)(7) of P.L. 105–119 from participating in class action suits and directs the Corporation to ensure its grantees comply."

LSC totally ignored the reminder from Congress and took no action to stop class action lawsuits.

USING MIRROR CORPORATIONS TO EVADE CONGRESSIONAL RESTRICTIONS—AN OLD LEGAL SERVICES TRICK WITH A NEW SPIN

The new restrictions imposed by Congress in 1996 left the political activist element within the legal services community looking for ways to continue the more ideological activities that were so ingrained in the program. The restrictions were not

part of the LSC Act, just appropriations riders effective only for the fiscal year involved, so the hope was they were a temporary impediment to activism as usual.

Using a version of a strategy set up in the 1980's to evade the relatively minor restrictions enacted in the Reagan years, grantees sought to evade the restrictions by setting up closely affiliated but legally distinct entities. In 1985, a General Accounting Office investigation determined that closely affiliated groups engaged in activities prohibited to LSC grantees and that the relationships between the two sets of groups were so close that LSC should consider them one group for purposes of complying with the restrictions. (See: "The Establishment of Alternative Corporations By Selected Legal Services Corporation Grant Recipients," U.S. General Accounting Office, B-202116, Aug. 22, 1985)

While the earlier version of setting up closely affiliated alternative corporations, sometimes called "mirror corporations," typically began with a legal services program providing a subgrant to the new group, that option was not available in the 1990's because LSC regulations interpreted subgrantees as having to comply with LSC restrictions imposed by Congress.

The new, post-1996 methodology was for an existing LSC-funded program with a history of activities of the type newly restricted to renounce its LSC grant while keeping as much of the non-LSC funding as possible. Some attorneys from the LSC program would then set up a new group close by—sometimes in the same building or on the same block.

The new group received the LSC grant while the old group used the funds from bar support, Interest on Lawyers Trust Accounts, state support, and other sources to continue the cases now forbidden by Congress.

The iron rule is supposed to be that no LSC resources fund restricted activities or groups conducting restricted activities. The key LSC regulation, known as the program integrity regulation, is set forth at 45 C.F.R. 1610. LSC will find that a recipient of their funds has objective integrity and independence from a group if:

> (1) The other organization is a legally separate entity;
>
> (2) The other organization receives no transfer of LSC funds, and LSC funds do not subsidize restricted activities; and
>
> (3) The recipient is physically and financially separate from the other organization. Mere bookkeeping separation of LSC funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on the totality of facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include, but not be limited to:
>
> (i) The existence of separate personnel;
>
> (ii) The existence of separate accounting and timekeeping records;
>
> (iii) The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
>
> (iv) The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.
>
> (45 C.F.R. 1610.8 (a))

The discretion given LSC to enforce the regulation is a giant loophole: regardless of whether a LSC recipient shares a building, personnel, or financial arrangements, every case is determined on the "totality of facts" as interpreted by LSC. This arrangement has been viewed as a green light for programs to work closely with their mirror corporations which are engaged in a wide range of restricted activities.

Immediately after the restriction took place, mirror corporations began to spring up from coast to coast. According to an article in the November 21, 1996 Los Angeles Daily Journal, "About 100 federally [LSC] funded programs set up new legal services agencies in late 1995 or early 1996, either to take cases no longer allowed under federal [LSC] funding or to take the federal [LSC] funding itself."

And the closeness of LSC-funded groups and the groups doing restricted activities was immediately apparent.

- The Philadelphia Legal Assistance Center was formed by 12 lawyers from Community Legal Services to assume CLS's non-prohibited cases, setting up shop in the same building as CLS. (Legal Intelligencer, Jan. 30, 1996)
- Legal Services of North Carolina rented out part of their building, purchased with LSC funds, to the North Carolina Justice and Community Development Center—a group which engages in grass roots political projects, lobbying and other restricted activities.

- In New York, the LSC-funded farmworker program and Farmworker Legal Services of New York, a group doing restricted activities, work out of the same address with no separate suite numbers. The LSC group co-counseled on at least 5 cases with the group doing restricted activities. LSC-funded groups are discouraged from using scarce resources to take cases when there is other counsel available.

Some programs became so careless at the dividing line between groups doing restricted activities and LSC groups that the obvious apparent use of LSC funds for restricted activities surfaced publicly.

The Legal Aid Society of Alameda, a program funded by LSC with a long history of using legal services funds to support activism, was removed from LSC funding when an investigation by the LSC Inspector General's office found numerous problems. One published report called the program's case management and timekeeping systems unreliable and stated that it appeared attorneys continued working on restricted cases after the restrictions went into effect. The LSC Inspector General was quoted as saying, "We could not determine that LASAC divested of class action, prisoner litigation and restricted alien cases by the July 31, 1996 deadline." (The Recorder, June 29, 1998)

The problems persist to this day but are rarely, if ever, discovered by LSC.

In a very recent case, Lane County Legal Aid Service, Inc. (LCLAS) of Michigan was cited by the LSC Inspector General's office for multiple violations of the LSC Program Integrity regulation.

In an Audit Report dated October 2001 (available at www.oig.lsc.gov), the Inspector general's office determined:

- LCLAS did not maintain objective integrity and independence from a legal organization that engaged in prohibited activities;
- LCLAS allowed a full-time attorney to work on a class action lawsuit for the other organization while in the LSC grantee's office; and
- LCLAS certified compliance with LSC regulation without required supporting document.

The LSC Inspector General's audit report came out in October 2001 but to date there has been no public indication that LSC has done anything whatsoever to sanction the program for its violations of federal law.

Nor is this the only case in which LSC has learned of mirror corporations working hand-in-glove with LSC programs in ways that make a mockery of the requirement that LSC groups and groups doing restricted activities be physically and financially separate.

Legal Services of North Carolina (LSNC) and its tenant, the politically active North Carolina Justice and Community Development Center (NCJCDC), have developed close legal and financial ties that parallel their close physical ties. Both work out of 224 S. Dawson Street, Raleigh, NC. No separate suite or room numbers are listed differentiating the groups on a number of public documents. Property records list the building as owned by LSNC and having a market value of $1,184,871.

In a complaint filed with LSC against Legal Services of North Carolina on May 18, 2000, by National Legal and Policy Center and the North Carolina Growers Association, the complainants pointed out that LSNC and NCJCDC were co-counseling on a case in which attorneys' fees were being sought. The LSC-program asked that any attorneys' fees go to its co-counsel, NCJCDC.

The complaint pointed out that:

- The LSC Act and regulations prohibit this type of fee-generating case
- LSC-funded attorneys are banned from taking attorneys' fees and the request to the court that any attorneys' fees in the case go to the mirror corporation certainly looks nothing like the financial separation mandated by federal law and LSC's program integrity regulation.

LSC took no action on the complaint.

The meaning is clear: in LSC's view of the physical and financial separation requirement, a program doing numerous restricted activities can operate out of a office paid for with LSC funds while co-counseling on cases in which any attorneys' fees go directly to the group conducting the restricted activities.

TAXPAYER-SUBSIDIZED POLITICAL ACTIVISM

In December 1996, lawyers from the LSC-funded Texas Rural Legal Aid (TRLA) filed a lawsuit in federal court to overturn the election of two Republicans to county offices. The lawyers challenged the absentee ballots of about 800 active duty mili-

tary personnel and their families, claiming their votes improperly diluted the vote of their client.

Despite a clear Congressional restriction against legal services lawyers seeking attorneys' fees, the lawsuit asked for attorneys' fees.

The legal services lawyers' challenge to the voting rights of active duty military personnel met with an immediate and broadly based, bipartisan opposition:

- Texas Attorney General Dan Morales, a Democrat, filed a brief challenging the legal service lawyers' interpretation of Texas election law.
- 58 U.S. Senators signed a letter to Attorney General Reno asking her to intervene on behalf of the voting rights of the military voters

LSC wrote to TRLA on January 8, 1997, stating that their request for attorneys' fees was an apparent violation of the law. TRLA pulled out of the lawsuit as counsel but a legal services lawyer stayed in the lawsuit as an expert witness.

A major problem with LSC's handling of the case was the fact that LSC never challenged TRLA for getting involved in a partisan effort to overturn an election.

The major beneficiary of the legal action would be the two losing Democrat candidates, not the lone client who TRLA claimed had her vote diluted by allowing military voters to vote by absentee ballot.

Coincidentally, earlier in the election year, TRLA lawyer Jorge Ramirez became Executive Director of Texas Democratic Party and later served as acting general counsel.

LSC's January 8, 1997, letter to TRLA did not make an issue of involvement in overturning a partisan election nor did it find anything wrong with the effort to strip voting rights from military personnel, a number of which were on active duty in Bosnia at the time.

If there was any doubt that LSC would refuse to discipline TRLA over the political lawsuit, aside from the illegal request for attorneys' fees, it was removed when LSC spokesperson Nikki Mitchell stated:

> "In terms of the program's priorities and in terms of the restrictions placed on Legal Services by Congress, the suit was perfectly valid."

The Legal Services Act explicitly prohibits legal services from involvement in any political activity. What is more inherently political than challenging an election?

Section 1007(a)(6) of the LSC Act states that LSC shall:

> "(6) insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from—
>
> (A) any political activity

Lest there be any doubt as to the meaning of the prohibition against involvement in "any political activity," this section of the LSC Act was interpreted by U.S. Circuit Judge Abner J. Mikva in *Texas Rural Legal Aid v. Legal Services Corporation*, the case lost in 1990 before the U.S. Court of Appeals for the District of Columbia Circuit, by TRLA when they challenged the restriction against involvement in Congressional redistricting cases.

Judge Mikva, for years a Democratic Congressman from Illinois, hammered home two points in rejecting TRLA's arguments:

> ". . . the [LSC] Act charges LSC with a duty to ensure that the legal services program remains free of partisan political influence and involvement."
>
> "Significantly, subpart (A) of section 1007(a)(6), which prohibits 'any political activity' by attorneys of recipient programs, does not contain an exception for legal advice and representation"

Despite Judge Mikva's decision in a case involving the very same two parties to the voting case controversy and the interpretation of the very same section of the LSC Act, the Legal Services Corporation decided that TRLA's involvement in challenging the election was "perfectly valid."

Judge Mikva's comment from the 1990 case supports an opposite view. He stated, ". . . we cannot conclude that LSC has no right to prohibit its grantees from engaging in partisan politics."

In short, LSC ignored the law and gave a green light to partisan political activity.

Legal services lawyers, especially from TRLA, know a green light when they see one and continued:

- A class action lawsuit conducted by a lawyer on her "free time" while working part time for TRLA was the basis for a stridently anti-George W. Bush commercial during the 2000 presidential election campaign.

- An activist web page urging individuals to use their tax rebate to "Fund the Fight Against Bush and his Agenda" by pledging their rebate check to "Organizations Fighting Against Bush's Agenda" urged contributions to a number of left leaning advocacy groups including TRLA. For good measure, viewers can link directly to the TRLA web page to facilitate donations.

Despite the reforms, its partisan politics as usual with LSC's funds and its blessing.

CONGRESS FORBIDS ATTORNEY FEES WITH NO EXCEPTIONS— LSC CRAFTS A LOOPHOLE TO ALLOW ATTORNEY'S FEES FROM THE DISABLED; CONGRESS SCOLDS LSC AND THE LOOPHOLE IS CLOSED

One of the reforms enacted by Congress as part of the FY1996 LSC appropriations law was a ban on claiming, collecting or retaining attorneys' fees. (Pub. L. 104–134, 110 Stat. 1321, 504(a)(13).

Among the reasons for this reform was the fact that legal services lawyers salaries were already paid by the taxpayer so the usual rationale for allowing such fees to compensate an attorney did not exist.

Also, Congress did not want legal services lawyers to abuse their discretion in taking cases which allowed attorneys' fees and ignoring the poor whose cases which did not allow such fees.

Finally, cases allowing attorneys' fees are much more likely to be pursued by private counsel so using tax-funded lawyers in such cases was considered a unnecessary use of public funds.

Despite the crystal clear intent of Congress that such attorneys' fees be banned, LSC's Board wrote a proposed regulation which allowed attorneys' fees to go to legal services lawyers in certain cases involving arguably the most deserving of its clients—the disabled poor in Social Security disability cases.

The intent of Congress that no fees be charged by legal services lawyers ended up being "interpreted" by the LSC Board to mean that disabled poor clients had to give up part of their recovery in attorneys' fees.

Fortunately, Congress intervened. At a February 26, 1997 hearing before the House Commerce, Justice, and State, the Judiciary and Related Agencies Subcommittee, Chairman Hal Rogers (R-KY) strongly criticized LSC for its attempt to dilute the attorneys' fee restriction enacted by Congress.

When LSC Vice Chairman John Erlenborn attempted to defend LSC's proposed regulation allowing attorneys' fees to be claimed in cases involving poor, disabled clients, Chairman Rogers responded with both common sense and bluntness:

> "It's outrageous that your interpretation would be that minute considering all the hot water you're in."
>
> (The Recorder, Mar. 5, 1997, page 1)

When Mr. Erlenborn insisted on defending the controversial regulation, Chairman Rogers pointedly responded:

> "You can't seem to help yourself. You do not grasp reality. Some of us are losing patience."
>
> (New Jersey Lawyer, Mar. 10, 1997, page 3)

LSC finally got the message. The regulation language was changed so that cases involving the poor and disable could not be used to claim attorneys' fees.

Nevertheless, the LSC board continued to use its authority to draft regulations to carve loopholes into or water down the restrictions Congress enacted.

WHAT CAN BE DONE?

Trying to reform the Legal Services Corporation is difficult. Congress has been trying for more than 25 years with mixed results.

As events since the 1996 reforms has shown, LSC is difficult to reform because it does not want to be reformed.

As Rep. Radanovich pointed out, Congress has very little control over LSC.

As the *Regional Management Corporation v. LSC* case showed, LSC is not subject to judicial review. It can and does use its discretionary authority to ignore repeated violations of reforms enacted by Congress.

As the former LSC Inspector General pointed out in his September 2000 letter to Chairman Hal Rogers, LSC waives its own access to information from grantees and encourages grantees to deny the Inspector General access to information.

As the LSC's record on competition shows, it took a requirement to promote competition and turned it into a system in which competition for grants is all but nonexistent.

As LSC showed with its farcical special commission, it has no problem taking a clear Congressional requirement that no alien receive legal assistance "unless the alien is present in the United States" and interpret the word "is" to mean "was."

As LSC has demonstrated, its interpretation of the reform mandating that grantees be physically and financially separate from groups doing restricted activities means the two groups can share offices and staffs and co-counsel in lawsuits in which the politically active group is seeking attorneys' fees.

As LSC showed in the Texas Rural Legal Aid case, LSC interprets the restriction against political activity to allow legal services lawyers to challenge the election of Republicans by challenging the rights of military personnel to vote by absentee ballot.

Caught red-handed by Congress, the GAO, and Associated press in passing on wildly inflated case numbers to Congress to justify increased funding, LSC falsely assured Congress the problem was fixed yet a second GAO investigation showed that the problem had not been corrected.

Claiming its grantees are providing top quality legal services, LSC's own Vice President acknowledges the "dirty little secret" that quality is "below appropriate levels."

For the most part, band aid approaches will do little to reform this fundamentally flawed program.

The best that Congress can hope for is that President Bush will appoint a LSC Board committed to following the reforms, not undermining them.

LSC also needs an Inspector General whose access to documents is not being frustrated by an LSC Board and President.

And unfortunately, LSC needs almost continuous oversight because few of the oversight tools available for federal agencies apply to this private corporation with its long history of ignoring the will of Congress.

In the absence of continuous oversight, a major reduction in LSC funding will undeniably cut down on the abuses and perhaps convince the activists that thwarting the will of Congress has a price.

Mr. BARR. Thank you very much, Mr. Boehm.

Our final witness today, Mr. Jonathan Ross. We're very happy to have you today, and you are recognized for 5 minutes for your opening statement, sir.

STATEMENT OF L. JONATHAN ROSS, ESQ., CHAIRMAN, STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, AMERICAN BAR ASSOCIATION

Mr. ROSS. Thank you, Mr. Chairman.

I appear here on behalf of Robert E. Hirshon of Portland, Maine, president of the American Bar Association. And it's ironic that I do so because my most active role in legal services began in the mid-80's when I formed, with leaders from Texas and Massachusetts, Bar Leaders for the Preservation of Legal Services for the Poor, because we believed that neither LSC nor the ABA were active enough in providing equal justice—equal access to justice in our system in this country.

Now I appear before you as Chair of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. And I'm here to tell you that the ABA is active with LSC in ensuring the Constitution's promise of equal justice for all and that LSC, from my perspective, is a well-managed organization that is responding to the congressional directives contained in the appropriations bills.

We are full partners with LSC in working to ensure that low-income Americans can address their basic, everyday legal problems. We're a long way from reaching that goal, but we're active and we're working together.

Mr. Watt was correct when he pointed out the legal need that exists in this country for this kind of help. According to recent census

figures, over 40 million people in the United States are eligible for LSC-funded help. ABA legal needs study in 1994 showed that only about 20 percent of the need was being met. And studies over the past 2 years have verified in Oregon and other places that that still remains the same.

The Federal umbrella of LSC is the structure that delivers this service to the people who need it, and it needs to continue.

Now the Legal Services Corporation has come a long way from the past and particularly in the last several years, with respect to compliance. It's refocused its efforts to serve the basic legal needs of the poor, has implemented new rules to ensure that funds are used appropriately, and it's gone beyond what Congress asked, beginning a nationwide State planning program to improve local programs and ensure the utmost efficiency and effectiveness of the limited resources at its disposal.

Competition has helped in that regard. And you will find in many States existing programs competing with each other for grants for service to clients.

The CSR question, the reporting question, I think has been adequately responded to. The error rate is down from 11 percent to under 5 percent, and all eight of the mandates from GAO have been met by the LSC.

The *Velazquez* case that challenged the welfare reform restriction of this Congress was defended vigorously, all the way to the United States Supreme Court, by the current board and management of Legal Services Corporation, and they argued regularly and vigorously that those restrictions were appropriate. They lost 5–4. They are now involved in defending the *Dobbins* case with equal vigor and trying to defend what this Congress has said must apply here.

We have no doubt about that. And I can tell you from personal experience that when I go to board meetings, when I go to their committee meetings, they talk regularly about how what they're doing meets the mandates of this Congress.

Time will not permit me to give you examples of what the folks you fund do for the people of this country. But let me tell you that the LSC program in New York has responded significantly to the events of September 11 to provide direct service to victims and their families who would not have help otherwise.

And when we were last here in '99, we were telling you about how their grantees, along with the ABA and FEMA and other organizations, responded to the devastation of Hurricane Floyd. This is a vital and necessary program.

Since 1996, LSC's leadership has worked closely with congressional leadership in both the House and Senate to ensure that the Corporation and its local grantees are focused on meeting the basic legal needs of the poor. The Corporation has demonstrated its commitment and ability to carry out the program changes. And management has aggressively enforced restrictions; continues to work diligently and successfully to improve the case service reporting system; and has engaged in comprehensive State planning, which has significantly improved the delivery of legal services.

The single greatest deficiency of the Legal Services Corporation is the lack of adequate resources to meet the needs of that 80 per-

cent that go uncared for. And we ask for your support in making sure that we can get there.

Thank you very much.

[The prepared statement of Mr. Ross follows:]

PREPARED STATEMENT OF JONATHAN ROSS

Mr. Chairman and Members of the Subcommittee:

I am Jonathan Ross a lawyer in private practice with the Manchester, New Hampshire law firm of Wiggin & Nourie. I submit this testimony at the request of the President of the American Bar Association, Robert E. Hirshon of Portland, Maine, to voice the Association's views with respect to the operation of the Legal Services Corporation ("LSC" or "Corporation") and its importance to ensuring equal justice for all.

The American Bar Association, the world's largest, voluntary professional organization with more than 400,000 members, is the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law.

I testify today in my capacity as Chair of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. This Standing Committee serves the ABA and the nation by examining issues relating to the delivery of civil legal assistance and criminal defender services to the poor. It maintains close liaison with state and local bar association leaders, providing information and developing policy on civil legal aid and indigent defense. It advocates for and works to ensure the availability of legal aid and defender services for indigent persons through a variety of activities and projects.

I also testify today based on my 35 years of direct, personal involvement in the provision of legal services for the poor. I first became interested in this issue while I was still in law school in 1965, when I worked for the Neighborhood Legal Services Office of the Office of Economic Opportunity in Washington, DC. I became actively involved in the national debate in 1985. Ironically, back then I didn't think the ABA was doing enough in this area and I also thought LSC was badly managed. In 1986, I co-founded the Bar Leaders for the Preservation of Legal Services for the Poor during my term as president of New Hampshire Bar. I formed this ad hoc organization, along with the Texas and Massachusetts Bar Presidents, to raise awareness of the problem within the organized bar, and to engage in advocacy before the LSC Board, in Congress and in other appropriate forums. Today, I'm pleased to report that the ABA is extremely active in ensuring the Constitution's promise of "equal justice for all" and that the LSC is a well-managed organization. The ABA and the LSC are full partners in working to ensure that low-income Americans can address their basic everyday legal problems. We're a long way from reaching that goal, but we're active and we're working together.

I. THE LEGAL SERVICES CORPORATION PLAYS A VITAL ROLE IN THE JUSTICE SYSTEM

Your Subcommittee is focusing today on many of the management issues related to LSC: whether LSC-funded programs are counting their cases accurately, whether programs are complying with the LSC regulations and whether programs are representing ineligible clients or taking on restricted cases. While these issues are necessary and important to your Subcommittee's oversight role, before I address some of these matters I think it is vitally important to put a human face on the work LSC-funded programs do.

For more than a quarter of a century, the Legal Services Corporation has been a lifeline for Americans in desperate need. For poor Americans, LSC-funded legal services programs have been there at times when they had nowhere else to go. These are just a few examples of the clients served by Georgia Legal Services.

- In Polk County, a woman's step-daughter sought to evict her from the mobile home that she had shared with her husband before he entered a long term care facility because of progressive Alzheimers Disease. The step-daughter obtained a power of attorney (POA) from her father 18 months after he entered the nursing home. Alleging that her father and step-mother were divorced, the step-daughter used the POA to get his Social Security benefits switched to her as representative payee, closed the parties' joint bank account, and then attempted to evict her step-mother from the marital home. Georgia Legal Services successfully represented the step-mother and the step-daughter dismissed the eviction suit.

- Georgia Legal Services represented a young women from Douglas County who was first beaten by her spouse, and was then forced to respond to an overly zealous case worker from the Department of Family and Children Services (DFCS) who removed her children from her custody. DFCS used her status as a victim of domestic violence as a basis for deprivation proceedings. Through a series of hearings and negotiation sessions, the legal aid program helped the client gain protection from her husband and regain custody of her children.

These are just a few of the millions of people legal aid lawyers help every year. The Corporation, formed in 1974 with bipartisan Congressional support and the endorsement of the Nixon Administration, was created to ensure that all Americans have access to a lawyer and the justice system for civil legal issues regardless of their ability to pay. The 2000 census (released in September 2001) reports 31 million Americans continue to live in poverty, and another 7 million live on the brink of poverty, making more than one in seven Americans eligible for LSC-funded representation.[1] In 1994, a Temple University study commissioned by the American Bar Association reported that, despite the combined effort of legal services programs and the private bar, only 20 percent of the civil legal needs of the poor were being met. More recent studies conducted in several states, including Oregon and Vermont, show that nine years later 80 percent of the civil legal needs of the poor are not being addressed.[2]

II. THE LEGAL SERVICES CORPORATION IS CARRYING OUT ITS CONGRESSIONAL MANDATE

The Legal Services Corporation has come a long way in the past several years. LSC used to be a target for elimination by some Members of Congress and certain organizations. After refocusing its efforts to serve the basic legal needs of the poor and having strengthened its delivery of those services through some initiatives I will discuss, the Corporation today enjoys the support of President George W. Bush, a strong bipartisan majority in Congress, the business community[3], and individuals across the nation[4]. In 2001, for the first time in six years, the LSC budget was fully funded by the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies ("CJS Subcommittee"). Just this month, President Bush requested that LSC receive level funding of $329.3 million for FY 2003, showing his strong support for the program. LSC has earned this trust by focusing on serving the basic legal needs of the poor, by engaging in state planning to improve service delivery and by improving its management structure and accountability to Congress.

A. LSC is Focused on its Mission of Serving the Legal Needs of the Poor

LSC currently funds local legal aid programs serving every state, county and Congressional District in the U.S. and its territories. These programs provide direct services to more than one million constituents who struggle to get by on incomes below or near the poverty line as established by the Department of Health and Human Services. LSC clients include the working poor, veterans, family farmers

---

[1] Joseph Dalaker, US Census Bureau, Current Population Reports, Series P60–214, *Poverty in the United States: 2000*, U.S. Government Printing Office, Washington, D.C. U.S. Census Bureau, "Historical Poverty Tables—Current Population Survey, (table) 6. People Below 125% of Poverty Level and the Near Poor"; published September 2001.

[2] Roy W. Reese & Carolyn A. Elfred, Institute for Survey Research at Temple University for the Consortium on Legal Services and the Public, *Report on the Legal Needs of the Low- and Moderate-Income Public*, January, 1994; Dale, D. Michael, *The State of Access to Justice in Oregon, Part I: Assessment of Legal Needs*, Sponsored by the Oregon State Bar, The Oregon Judicial Department, The Office of Governor John Kitzhaber, M.D., March 31, 2000; Honorable Denise R. Johnson and Robert Hemley et al, Committee on Equal Access to Legal Services, *Report on Investigation of Need and Assessment of Resources* (September 2001, accessed February 25, 2002) *http://www.vermontjudiciary.org/Resources/CommitteeReports/ULTREPT.pdf*

[3] When LSC was threatened with termination in the 1980s, the CEOs of Fortune 500 companies banded together and informed Congress just how important access to the justice system was to their employees. Between 1995 and 2000, when LSC's existence and funding were threatened, a group of Fortune 500 general counsels lobbied Congress to increase funding for LSC after its funding had been cut by the House Appropriations Committee. These general counsels represented leading American corporations, including Proctor & Gamble, Shell Oil, Eastman Kodak, Georgia-Pacific, Colgate-Palmolive, General Motors, Ford Motor Company and Dupont.

[4] Americans strongly support spending their federal tax dollars to provide legal assistance to low-income individuals and families. An August 1997 Louis Harris poll reported that 70 percent of those queried believed federal dollars should be used to pay for civil legal aid to the poor in such cases as child custody, adoption and divorce. A June 1999 Harris poll reported that 80 percent of those surveyed believed federal funds should pay for legal assistance to low-income victims of domestic violence.

and people with disabilities. Many beneficiaries of LSC funding were formerly middle-class, who became poor because of disaster, unemployment, illness or the break-up of a family. Historically, more than two-thirds of LSC clients have been women, most of them mothers with young children. Local legal services programs make a real difference in the lives of millions of poor Americans by helping them resolve such family law cases as domestic violence and child custody issues, and such benefit cases as wrongfully denied Social Security and veterans' benefits.

B. LSC Has Complied With GAO Recommendations to Improve its CSR Data

In 1999, the General Accounting Office (GAO) examined LSC's Case Service Reporting (CSR) system and made recommendations that included revising the system itself, providing more training to legal services providers who must comply with the CSR system, and changing procedures to ensure the uniform collection of data and reporting of statistics.

LSC responded to GAO's recommendations for improving its CSR statistics by, among other things, issuing several program letters clarifying procedures for certifying case reporting statistics and provisions in its 1999 CSR manual. LSC also issued other program letters amending the 1999 CSR manual to address specific issues raised by the GAO, including (1) who can provide legal assistance, (2) the timely closing of cases, (3) documentation requirements, and (4) client eligibility (income, assets, citizenship and alien documentation requirements); and including a new section on legal problem categories and codes. LSC also issued a 1999 Revised CSR Manual in May 2000.

In its report to accompany the FY 2000 spending bill, the House Appropriations CJS Subcommittee directed the Corporation to make improvements in the accuracy of its CSR submissions to Congress a top priority.[5] The Subcommittee required LSC to submit two special reports to Congress, in April and July 2000, documenting improvements in the accuracy of its CSR reports.

LSC submitted these reports in a timely fashion and reported vast improvements in the accuracy of its statistics. Reporting errors declined from an average of 11 percent to five percent. The CJS Appropriations Subcommittee was pleased with LSC's progress and stated so in the FY 2001 CJS Appropriations bill Committee report, H.Rept. 106–680.[6]

The ABA is satisfied LSC is making adequate progress to improve the reporting of individual grantees and the performance of the system as a whole. We encourage LSC to continue to work to find better ways to gather data to more accurately report all of the services provided.

C. LSC has Enforced and Defended Congressional Restrictions

The ABA continues to believe that the Corporation is committed to carrying out its mission, as mandated by Congress. In 1996, Congress imposed several restrictions on the type of cases legal services programs could accept and on the clients they could serve. The Corporation has fully implemented those restrictions established by Congress.

LSC has vigorously defended every lawsuit challenging the restrictions, including *Legal Services Corporation vs. Velasquez*, 531 U.S. 533 (2001), in which the U.S. Supreme Court ultimately decided that one of the restrictions violated the First Amendment. LSC is again vigorously defending the restrictions in a recently filed lawsuit, *Dobbins vs. Legal Services Corporation*.

III. LSC STATE PLANNING PROMISES TO IMPROVE THE DELIVERY OF LEGAL SERVICES

Beginning in 1995, LSC launched an ambitious "state planning" initiative, intended to encourage each state to undertake a careful process of system analysis and improvement:

- Obtain or significantly expand state funding for legal services;
- Establish systems for coordinating advocacy and training among programs;

---

[5] U.S. House, *Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill, Fiscal Year 2000 (to accompany H.R. 2670)* (H.Rept 106–283). Washington: Government Printing Office, August 2, 1999.

[6] "The Committee is pleased with the efforts of the Corporation to improve the case reporting of its grantees. However, the Committee feels the Corporation can continue to work with its grantees to improve case reporting and lower the grantees' reporting rate error." U.S. House, *Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill, Fiscal Year 2001 (to accompany H.R. 4690)* (H.Rept 106–680). Washington: Government Printing Office, June 19, 2000. The LSC reported even more progress at reducing the CSR error rate in the July 30, 2000 Special Report to Congress.

- Make the court system more responsive and accessible to low-income and pro se litigants;
- Reconfigure programs where necessary to strengthen coordination, access, and services;
- Establish structures to more creatively involve the private bar in the delivery of civil legal assistance;
- Create and execute a statewide technology plan to improve access and enhance delivery;
- Develop a statewide coordinated intake system; and
- Expand the number of stakeholders within a state committed to the concept of equal justice.

In short, the LSC sought to develop structures and processes for building and maintaining comprehensive, integrated, statewide civil legal assistance delivery systems. While this initiative has required changes that have made some uncomfortable, the ABA believes that on the whole the changes it has stimulated have resulted in a stronger and more effective system.

The ABA has closely coordinated with the LSC to encourage and support efforts to improve each state's system for delivering legal services to the poor. The ABA created in 1996, in conjunction with the National Legal Aid and Defender Association, the ABA/NLADA "State Planning Assistance Network" to provide technical assistance to those in the states engaged in the planning process. We continue to sponsor this program, seeking to promote and support state-based partnerships among the bar, the courts, and legal services providers to expand access to justice. The ABA has also assisted in the development of standards for the state planning process; I served on the LSC task force that developed those standards. While resources for state systems remain inadequate, we believe that these careful planning efforts promise more efficient use of those limited resources, and better overall access and service for clients.

IV. THE PRIVATE BAR IS AN ACTIVE PARTNER WITH LSC IN SERVING LEGAL NEEDS OF THE POOR

The ABA actively encourages lawyers to provide *pro bono* representation to needy clients. The ABA estimates that more than 120,000 lawyers are actively participating in organized *pro bono* programs throughout the country. The ABA sponsors many programs to foster *pro bono* participation and increased funding for legal aid programs.

The ABA Center for *Pro Bono* assists ABA members and the legal community in developing and supporting effective *pro bono* legal services in civil matters as part of the profession's effort to ensure access to legal representation and the American system of justice.

The Project to Expand Resources for Legal Services, sponsored by SCLAID, assists bar associations and their leaders, private lawyers, bar foundations, IOLTA programs, legal services programs and *pro bono* programs to increase private resources for legal services.

The ABA Standing Committee on Legal Assistance for Military Personnel (LAMP) helps the military and the Department of Defense improve the effectiveness of legal assistance provided in civil matters to an estimated nine million military personnel and their dependants. America's soldiers and their families are one of the neediest groups in terms of civil legal assistance. In response to the military activations following the September 11 tragedy, this Committee instituted the program "Enduring LAMP", which provides legal assistance to service personnel who have been deployed. Many state and local bar associations have also instituted programs to provide free legal assistance to victims of September 11.

I am pleased to report that the efforts of the organized bar have increased dramatically since 1985. I expect that we will continue to do more in the future.

V. CONCLUSION

Since 1996, LSC's leadership has worked closely with Congressional leadership in both the House and the Senate to ensure that the Corporation and its local grantees are focused on meeting the basic legal needs of the poor. The Corporation has demonstrated its commitment and ability to carry out the program changes. LSC management aggressively enforces the restrictions, continues to work diligently and successfully to improve the case service reporting system, and has engaged in comprehensive state planning which has significantly improved the delivery of legal services.

The single greatest deficiency of the Legal Services Corporation is the lack of adequate resources to meet the needs of the 80% of the poor who currently cannot be served. The Corporation, its grantees and their low-income clients deserve your support.

Mr. BARR. Thank you very much, Mr. Ross.

And I'd like to, again, on behalf of all Members of the Subcommittee, thank all four members of our witness team here today.

We'll now turn to questioning of the witnesses, and each Member will be limited to a 5-minute block of time. And then, time permitting, we'll have additional questions. And we will also be submitting to each of you additional questions from Members of the Subcommittee and counsel.

Mr. Erlenborn, we've already discussed, at least in passing on more than one occasion this morning, the language of Public Law 104–134 regarding Legal Services' representation of aliens not present in the country. As you're familiar with, section 504(a)(11) of that public law states the following: "None of the funds appropriated in this act to the Legal Services Corporation may be used to provide financial assistance to any person or entity that provides legal assistance for or on behalf of any alien unless the alien is present in the United States."

And yet, the Legal Services Corporation, through the Erlenborn Commission Report, and really, what to me is a Clintonesque interpretation of language, basically just boldly concludes that Congress did not understand the presence requirement, severely altered or restricted this representation, and simply concludes that representation should continue and is authorized, despite the plain meaning of the statute, the plain language of the statute, for aliens who simply have been in the country at some point and are no longer in the country.

Could you enlighten us a little bit further as to how this, to me, clearly erroneous ruling on the part of the Legal Services Corporation came about?

I mean, when—let me pose a question initially to you: Is not the language of the statute clear?

Mr. ERLENBORN. No, Mr. Chairman, you have not addressed what was the real issue. I think anybody looking at the language knows what "present" means. The question that we were facing is when. When does the alien have to be present?

And let's take an example. You have—let's say we have a woman who has been given asylum in the United States and is here as an alien. And let's say that her mother or father dies overseas in Europe someplace, and she would like to go there to attend the funeral. Or maybe it's a wedding in the family. And if she leaves this country to attend to these family obligations, and at the same time has been getting help from the local legal services program in her spousal abuse, the fact that she went over to Europe to attend the wedding or the funeral would mean, if you say at all times, from the beginning until the end, they had to be present in the United States, would mean that this lady would lose her right to have help in trying to avoid in the future the spousal abuse.

I make the point that most people seem to think about this as a H-2A problem. That certainly was one of the issues. But this affects every alien in the country who seeks help from the Legal

Services program. You tell them that they are now going to be bound to stay in the United States, don't go to Canada, don't go to Mexico, or you're going to lose your lawyer and never be able to see him again.

Mr. BARR. But I'm also looking——

Mr. ERLENBORN. It didn't seem to make much sense.

Mr. BARR [continuing]. At the language of the Erlenborn Commission report at page IV. It doesn't contemplate that this is simply—that the LSC would simply be authorized in the case of an alien who is in the country at the initiation of the lawsuit and then just temporarily has to leave. It says very clearly that they can initiate representation of aliens who are not in the country when the lawsuit is initiated, as long as they have some colorable claim to being in the United States. Even if they're not here at the initiation of the lawsuit, that's sufficient for purposes of trying to reach them through Legal Services Corporation representation. I mean, that doesn't fit within your hypothetical.

Mr. ERLENBORN. I think if you would look at the report, what we've said that if—number one, the person would have to have been here in the United States and in a legal status under the immigration and naturalization laws.

And by the way, one of the five lawyers, five law professors, who served on that Commission was Alex Aleinikoff at Georgetown, who is a very well-respected, highly sought-after attorney in the immigration area.

But what we found was that the person would have to have been in the United States in a legal status under the immigration law and that they would have to be present in the United States sufficient to maintain their legal status under the immigration law. That is the way we interpreted this.

Now, we looked at the——

Mr. BARR. Do you interpret it to mean that, at a minimum, they would have to be physically present in the United States at the initiation of the lawsuit?

Mr. ERLENBORN. Well, I don't know that we said it in those terms.

Mr. BARR. No, you didn't. That's why I'm asking.

Mr. ERLENBORN. What happens, for instance, in the H-2A situation, which there was a lot of testimony on——

Mr. BARR. So, basically, you're saying that you believe it's appropriate for an alien not present, physically present in the country, to have representation begun on their behalf by Legal Services Corporation monies.

Mr. ERLENBORN. I would have to go back and read the report. I do believe that they had to be in—had to be legally here and had not lost their legal presence in the United States at the time of the fact——

Mr. BARR. Legally and physically present?

Mr. ERLENBORN. Legally present is what the Commission decided.

Mr. BARR. I know, and I think we're sort of still in this Clinton conundrum here. What I'm simply asking is, do you not believe that in order to obtain representation, it ought to at least be a requirement that the alien be not only legally entitled to be here and

legally present but physically present as well in this country? Do you agree that that is a reasonable limitation and consistent with congressional intent?

Mr. ERLENBORN. The problem you have is, again, the question of when. At the time they——

Mr. BARR. I understand that. I'm saying, at the time of the initiation of the lawsuit.

Mr. ERLENBORN. At the time they go to the Legal Services lawyer?

Mr. BARR. At the time of the initiation of the lawsuit.

Mr. ERLENBORN. One of the problems with that is, in H-2A situations, the agricultural producer, utilizing the H-2A, can send them back to Mexico, not paying the wages that they were entitled to. And then, with the H-2A worker in Mexico, you would say that they've lost their right to representation. It puts an awful lot of power in the hands of the agricultural producer who wants to get rid of the workers without paying them, without giving them the compensation that——

Mr. BARR. Doesn't it also provide for very clear abuse and pressure being put on them? You basically can have absentee plaintiffs, and that effectively takes away the ability of the U.S. citizens, the U.S. companies, the farmers, who are trying to provide a valuable service to the United States of America—they're basically forced to defend against plaintiffs that aren't even in this country.

Mr. ERLENBORN. Well, I would——

Mr. BARR. Doesn't that take away, essentially, due process from them?

Mr. ERLENBORN. I would think, in most cases, the alien would have to be present to testify to make the case.

Mr. BARR. But not physically present in order to initiate the case.

Mr. ERLENBORN. Well, if the case was filed here, I guess they would be physically present to testify in a trial.

Mr. BARR. But do you think it should be a reasonable requirement and a reasonable interpretation of the statutory language that the alien should be required to be not only legally present but physically present in the country in order to initiate the lawsuit?

Mr. ERLENBORN. No, I don't think necessarily so. That means the H-2A worker would have to pay to come up here at the time——

Mr. BARR. Heaven forbid.

Mr. ERLENBORN [continuing]. The suit was filed. And then go back——

Mr. BARR. But wouldn't——

Mr. ERLENBORN [continuing]. To Mexico.

Mr. BARR. But if they're already here, I mean, the whole point of it is, they're already here.

Mr. ERLENBORN. Oh, no, they get sent back by the employer. The agricultural producer says, "I don't like this fellow. He"——

Mr. BARR. But at some point——

Mr. ERLENBORN. "I'm going to get rid of him. Send him"——

Mr. BARR. But at some point they're here.

Mr. ERLENBORN.—"back to Mexico."

Mr. BARR. At some point they're here. It isn't as if they never come into this country. Or is there still effort being made to go down to Mexico and recruit plaintiffs?

Mr. ERLENBORN. Being sent back to Mexico without having been paid ties the hands of the worker. Didn't get paid; cannot get any help in seeing that the pay is ultimately given to him.

Mr. BARR. Thank you.

We'll pursue this further, but at this time I would like to recognize for 5 minutes the distinguished Ranking Member, the gentleman from North Carolina.

Mr. WATT. Thank you, Mr. Chairman.

As tempted as I am to get into this debate about what "is" is, I think I will just let that go and suffice it to say that I think it's a lot, lot more complicated than just what "is" is. And I think the board and the Erlenborn Commission probably spent a substantial amount of time understanding that it is a lot more complicated than just that single kind of political catchphrase that seems simplistic to the public but beyond that has some pretty substantial implications, not the least of which is what is a lawyer's responsibility once they undertake representation if a person is here and then that person is no longer here. I mean, can you get in and out of cases on some arbitrary is-ness question?

But I'm not going there.

Let me applaud the Chairman for inviting what I think has been a very, very balanced panel of witnesses, not agreeing with each other, necessarily, about every specific point but pointing up very different perspectives. I think this was highlighted probably by Mr.—how do you——

Mr. BOEHM. Boehm.

Mr. WATT [continuing]. Boehm——

Mr. BOEHM. Rhymes with "home."

Mr. WATT [continuing]. And Mr. Ross' testimony being kind of back to back, one saying the Legal Services Corporation is out of control and the other one saying the Legal Services Corporation is well-managed.

And I suspect the—from your—from different perspectives and starting with different—from different places, one could logically conclude either one of those things, depending on where they start from.

I was interested, Mr. Boehm, to get to the end of your testimony and just kind of wondering, okay, we've got 26 pages here of horror stories or arguments about positions about horror stories, some of which I don't necessarily agree are horror stories, but at least that's your perception. And we get to the end of it, and we really—I was kind of hoping that we would have some suggestions from you about what the solutions were. And I kind of was disappointed to get to the end and have the last paragraph say to me: "In the absence of continuous oversight," which I presume the board does, "a major reduction in LSC funding will undeniably cut down on the abuses and perhaps convince the activists that thwarting the will of Congress has a price."

I suppose if we did that, we'd be punishing the very people—I assume you believe that the Legal Services Corporation provides some benefit.

Mr. BOEHM. There is some benefit, yes.

Mr. WATT. Okay.

Mr. BOEHM. And I spent most of my career supporting it, although wishing they could reform. And I reluctantly came to the conclusion, as it's presently set up under the act, as a private corporation, no judicial review, none of the normal checks and balances with a Federal agency——

Mr. WATT. Wait a minute, now. That's what we're here today to do. The Board meets regularly. We're doing our oversight. So isn't it a little bit of an overstatement to say that there is no judicial review and no oversight?

Mr. BOEHM. No, the judicial review is by a Federal judge. In other words, if LSC——

Mr. WATT. Judicial review is what you're——

Mr. BOEHM. Judicial review, right.

Mr. WATT. Okay.

Mr. BOEHM. Not—there is legislative oversight, certainly.

Mr. WATT. Okay, okay. I see what you're saying. You think the courts should be second-guessing some of these decisions that the Legal Services Corporation are making.

Mr. BOEHM. Well, sir, yes, in the sense that every Federal agency that is under the Administrative Procedures Act, that makes an administrative decision that may be questionable, there's a procedure where they can go to a Federal judge, get judicial review, and the judge decides, "Is the agency acting with a rational basis or not a rational basis?"

Mr. WATT. Isn't that where we're in *Velazquez*? I mean, we've gone into court, and the court made that determination, and what the court determined was that there were some areas that you could do this. But where you run afoul of the United States Constitution, which all of us have some obligation to act within the confines of—even Congress—that there are some limits to this. Isn't that what *Velazquez* stands for?

Mr. BOEHM. Except that it wasn't on an administrative decision of LSC board. They—Congress was, in effect, being examined by the Supreme Court. In that sense, I certainly agree with you.

But judicial review of LSC's administrative decisions is not there just because of the way it was set up. And the people—growers, some of the folks here and so forth—when they see LSC do something—LSC lawyers do something that's illegal, like the lobbying in South Carolina, they bring it to the attention of the LSC board. Their complaint's dismissed, even though it's clear. The judge said the lobbying was illegal. LSC didn't punish the program.

Mr. WATT. So let me just run this through for you here, and make sure I understand what you're saying, in this issue—the "is"-"is" question. If the board of Legal Services Corporation, as it did, sets up a commission to study it, and they reach a conclusion, you think it's the courts that ought to second-guess that decision rather than the Congress that ought to second-guess decision?

Mr. BOEHM. Well, both normally do. If LSC were a Federal agency, then it would be subject——

Mr. WATT. But LSC is not a Federal agency.

Mr. BOEHM. Exactly. That would be my point.

Mr. WATT. All right, so we should——

Mr. BOEHM. A Federal agency——

Mr. WATT. You think we should make this a Federal agency?

Mr. BOEHM. Well, originally, it was a Federal agency, and they had problems and felt a private corporation was the way to go.

Mr. WATT. So that's not the solution either.

Mr. BOEHM. So it's—it's—or a totally different type of Federal agency. People have talked about block grants, talked about under—subsidizing, for example, Judicare. All of this is in the context that Legal Services itself delivers less than maybe 5 percent of the civil legal aid to the poor in this country. There's a lot more pro bono. Poor people do have access to contingency lawyers in personal injury cases and things where that's appropriate.

So LSC doesn't do the bulk of even the civil, let alone they can't do criminal.

Mr. WATT. Where are you on this question of how we serve the other 80 percent that aren't getting it either from Legal Services, 5 percent, or other groups, 15 percent?

Mr. BOEHM. I agree that there's—I don't think—I think the 80 percent is a little flawed because the bar association——

Mr. WATT. Whatever the figures are.

Mr. BOEHM. Right. It's—right.

Mr. WATT. You concede that there are some——

Mr. BOEHM. No. Here's what I think is the real nub of it. I think poor people many times have problems, individual problems, where the actual dollar amount may be low, but it's very important to them. It's a consumer problem, employment problem, whatever.

To the extent that the laws say that this must be treated as a legal problem with well-paid lawyers or even not-well-paid lawyers on either side—say it's a dispute over $500; you don't have to go too many hours into that before it's prohibitive.

I think the solution—and it's already happening in certain respects—is to de-lawyerize—and I'm sure, you know, the bar is not totally in favor of this sort of thing—but to take a lot of these less expensive types of legal problems that poor people have and make it easier through mediation, arbitration, raising the limits in small-claims court where neither party needs a lawyer—that, I think, would be a far more appropriate solution than to just say, okay, every—I know we're a litigious society. I've been a lawyer myself for 25 years. But to say, "let's put two lawyers on the side of these relatively small legal problems, that's the reason you have so many unmet legal needs."

Poor people would like to have their problems resolved in a just and fair way, and anything we can do societally to promote those—ombudsman is another area, mediation, arbitration, and small-claims courts where counsel isn't needed—those I think are far more—are going to provide far more legal assistance to poor people who really need it than to just say make sure everybody has got lawyers and go in and duke it out.

That's the larger picture, I realize, but you were asking the larger picture, I think.

Mr. WATT. I appreciate, Mr. Chairman. I know I'm over my time, and I appreciate——

Mr. ERLENBORN. Mr. Chairman, could I address the question posed by Mr. Watt and addressed by Mr. Boehm?

Mr. Boehm seems to assume that whenever a prospective client goes to the Legal Services—local Legal Services program and looks for help from the lawyer that they're going to wind up in court. It's something less than 10 percent, probably more like 5 percent, that actually get to court.

What do they do? They negotiate, they compromise, and they settle these things.

So, you know, he has them all in court all day long, I guess, and using up these resources. That just doesn't happen. That's a pipe dream.

Mr. BARR. Thank you.

Mr. WATT. Thank you, Mr. Chairman.

Mr. BARR. Thank you.

I'd like to now recognize the distinguished former Chairman of this Subcommittee, the gentleman from Pennsylvania, Mr. Gekas, for 5 minutes.

Mr. GEKAS. Mr. Ross, you stated as one of your final statements that you feel or felt or do feel that the agency is well-handled, well-managed, did you not?

Mr. ROSS. I did.

Mr. GEKAS. Do you think that the absence of judicial review is a reason to question whether or not it's well-managed or don't you believe that judicial review should be part of the process?

Mr. ROSS. I don't think it's necessary. I would not support it. I would not revisit an issue that was discussed greatly in these halls and elsewhere about whether any taxpayer in this country could have standing in court to challenge a decision by the LSC board, and I'll tell you why. Because the limited resources that this Congress can give to serve poor people should not used in defending lawsuits every time this Board does something. There is oversight here. This is a private corporation. And I think that the solution is the correct one.

Mr. GEKAS. By the same token, those same resources to which you refer should not be used to entertain those kinds of suits that we have found to be vexatious and beyond the scope of the statute and so forth, because if we didn't spend them for the class actions and all of that, wouldn't we have more money for the 80 percent that are underserved?

Mr. ROSS. And I think what I said in my testimony, sir, is that, from my perception, this Board and the management of this Corporation since 1996, since the restrictions went in, has worked very diligently to direct its efforts at basic legal services for the poor and understood what you said.

Mr. GEKAS. But if it was well-managed, would there have been so many overcount situations in the cases that we found—year after year after year, an overstatement of the cases, thus inducing the Congress to, in effect, appropriate more monies because the caseload was mounting, but what was mounting was overcounting mounting.

Mr. ROSS. Well, since 1999, when that issue came up, this Board and this management has effectively responded to that and reduced the error rate from 11 to less than 5 percent.

And I would suggest to you that what they've done represents good management response to a problem identified.

Mr. GEKAS. So up to 1999 it was less well-managed?

Mr. ROSS. I don't agree with that.

Mr. GEKAS. I take that to be the case.

John, do you oppose judicial review on a limited, specific basis, not permitting, as Mr. Ross might be indicating, not permitting an individual taxpayer to sue but specifying how judicial review can come about, particularly in some of these cases where it's obvious that bringing in the court would arbitrate the decision?

Mr. ERLENBORN. Let me say that my concept of the Legal Services Corporation was one that would provide equal access to justice. We're not making equal access to justice available to everyone but a good part of the appropriated funds that we're using are to see that the restrictions that the Congress enacted are enforced. And that means going to court and fighting those who would have the restrictions thrown out as being unconstitutional, either under the first or the fifth amendment.

Now, we already have successfully, in many cases, but particularly the *Velazquez* case, used those appropriated funds, and we did protect the will of Congress.

Now, if we let everyone—every individual who has some sort of a complaint file a suit, we'll have to defend those suits. We won't have the money to take care of the needs of the poor. That's just the answer.

Mr. GEKAS. Well, what kind of cases would go up? The——

Mr. ERLENBORN. I have no idea.

Mr. GEKAS. Excuse me, John.

Mr. ERLENBORN. I have no idea.

Mr. GEKAS. We don't contemplate that going to the appeals court would be a case of domestic abuse or a property claim of some sort, something that's near and dear to the hearts of the poor people who can't get justice otherwise, an overcharge by some auto machinist, et cetera.

Do you contemplate that those are the ones that would go up to court? Or are they these general ones that seem to abuse the general purposes as Congress outlined them for legal services, don't you see?

We're not talking about the poor person's claim for recompense at some level. We're talking about the kinds of cases that go up to a higher level that attack the purposes of the Legal Services Corporation.

Mr. ERLENBORN. Well, my guess would be that if you let these decisions of the Board be challenged in court by any citizen, what you will find is that the professional opponents of the Legal Services Corporation will gin up a hell of a lot of lawsuits to tie our hands so that we couldn't get the job done that we intended to do.

Mr. GEKAS. I did caveat that I would want to specify how that judicial review would occur, excluding the right of any citizen, any time, on any basis to sue.

Mr. ERLENBORN. Well, you have to have some test.

Mr. GEKAS. That would be—yes, that's what I'm—it would have to have some criteria by which judicial review could honorably be brought.

I believe that's——

Mr. ERLENBORN. I think we have a system right now that works quite well.

Mr. GEKAS. Obviously, you do, yes, John.

Mr. BARR. I thank the gentleman from Pennsylvania.

The gentleman from the great State of Arizona is recognized for 5 minutes.

Mr. FLAKE. Thank you, Mr. Chairman,

I have to say, I'm kind of interested in LSC's interpretation of "is present." I'd sure like to stay in Arizona during these cold weeks back here and just give my voting card to somebody and tell the Speaker later, "I was there. I was present, just at another time." I mean, it doesn't work. And I just get a big kick out of this whole discussion, but it just doesn't pass the laugh test.

Returning to the main culprit here, the Texas—one of the culprits, the one that's been up front here, the Texas Rural Legal Aid group here. In 1996, they sued on behalf of a taxpayer who claimed that her vote, I believe, was diluted, seeking to overturn the election of two Republicans for county office, claiming that the military vote, absentee votes, were improperly cast or counted or whatever else.

That didn't pass the laugh test either. And LSC—well, LSC came in, actually, and said that the only problem was—is that the lawyers in that case sought attorneys' fees. The statement from the spokesman from LSC afterwards is—was: In terms of the program's priorities and in terms of the restrictions placed on Legal Services by Congress, that suit was perfectly valid.

Do you agree? Do you agree that it is valid for an LSC-funded organization to sue on behalf of taxpayers seeking to overturn elections?

Mr. ERLENBORN. As an attorney for 55-plus years, I make it a requirement that I have an opportunity to look at and judge an issue before answering it, so I'm not prepared to answer your question.

However, I can tell you, as you probably know, that the management of Legal Services Corporation saw to it that the attorneys in the Texas Rural Legal Aid got off of that case and somebody else took over, and we no longer were involved in it.

Mr. FLAKE. But——

Mr. ERLENBORN. Action was taken.

Mr. FLAKE. Okay. But was that firm—was the Texas Rural Legal Aid ever disciplined or ever——

Mr. ERLENBORN. Yes.

Mr. FLAKE [continuing]. Even told that they did the wrong thing?

As I understand it, and Mr. Boehm can clarify, but they were only told that you erred when you sought attorneys' fees——

Mr. ERLENBORN. I think——

Mr. FLAKE [continuing]. Not for anything else. And the spokesman clearly said that the suit was valid.

Mr. ERLENBORN. My——

Mr. FLAKE. Is that correct?

Mr. Boehm, do you want to——

Mr. BOEHM. Sure.

Not only did they not get out of the suit, they stayed in as an expert witness. The only penalty was for seeking attorneys' fees, which was an out-and-out violation of the congressional law.

And even though the LSC Act itself says no political activities and the Court of Appeals for DC, Judge Abner Mikva, former Congressman, said in a similar case involving the same parties, Texas Rural Legal and Legal Services, about whether they get involved in redistricting political activities, he said LSC has all the authority it needs to prohibit political activities. LSC thought that this case, which is overturning the election of two Republicans to local office by challenging the voting rights of 800 military people—many of them, by the way, were in Bosnia and hadn't got lengthy questionnaires and so forth—LSC said that was perfectly valid.

Not only is it not perfectly valid, it violates the LSC's own act against political activities.

Mr. FLAKE. Any response, Mr. Erlenborn?

Mr. ERLENBORN. All I can say is that the leaders of the Texas Rural Legal Aid were brought to Washington, summoned to Washington, were told that what they were doing was stupid, and that they were not going to be involved in that case any longer, and they got out of it.

Mr. FLAKE. Well, they may be on their way back.

Are you aware that section 1007(a)(6) states that—to ensure all attorneys engage in legal assistance supported in whole or in part by the Corporation refrain while so engaged from any political activity? You're aware of that——

Mr. ERLENBORN. Yes, I'm aware of that.

Mr. FLAKE. I'd like this entered into the record.

Mr. BARR. Without objection, so ordered.

Mr. FLAKE. Here's—from the Web page here, TaxRebatePledge.org—this is an organization set up, as it says here, to fight—fund to fight against Bush and his agenda.

If you—it says here, in the text here—it's asking people to send their rebate checks that they got through the Bush tax cut to these organizations who are fighting against the Bush tax agenda. And over here, it says—it lists the organizations fighting against Bush's agenda, if you'll click on this.

Well, my staff did, and they click on it, and they get a list of organizations that are fighting against the Bush Agenda. And if you look down this list, prominently displayed is the Texas Rural Legal Aid group. And if you click on their Web site—just two degrees of separation here—you will find that they are funded, as we know, by the LSC.

Is that not——

Mr. ERLENBORN. Have you brought that to our attention, by the way?

Mr. FLAKE. I am right now. I just discovered it.

Mr. ERLENBORN. Well, now we can start to do something about it.

Mr. FLAKE. All right. Can we expect that group to be summoned again to Washington?

Mr. BARR. Will the gentleman yield?

Mr. FLAKE. Yes.

Mr. BARR. Even though we're all certainly indebted to Mr. Flake for bringing this to the attention of the LSC, aren't there any guidelines that prohibit this? Is it up to Members of Congress to click on a Web site to discover this? What guidelines are these grantees given? Are they told in advance not to do this?

Mr. ERLENBORN. Well, they certainly cannot engage in political activities.

Mr. BARR. But they are.

Mr. ERLENBORN. Individual attorneys or other employees of the program can, on their own time——

Mr. FLAKE. But, sir, this is the group.

Mr. ERLENBORN [continuing]. Be politically active.

Mr. FLAKE. This is their Web page, not an individual within the group.

Mr. ERLENBORN. I would say, from what you've told me, and I would reserve my judgment until I can have all the facts brought forth, but from what you've told me, it sounds to me like they've engaged in something that is prohibited. And it's another stupid thing.

Mr. FLAKE. If I can ask just a follow-up, you mentioned that you have a staff of seven—well, you added seven to your compliance staff, is it?

Mr. ERLENBORN. Added seven.

Mr. FLAKE. And you have a $2.2 million budget. Individuals in your organization seeking to ensure that nobody does this kind of thing, and we, just looking at the testimony of Mr. Boehm and then making a couple of clicks, found this. Are you—you mean to say that that crack staff of seven people and $2.2 million budget failed to see this?

Mr. ERLENBORN. I have no idea. I would think they failed to see it, or they would've done something about it.

It's not the kind of thing that is——

Mr. WATT. Will the gentleman yield for just a second?

I'm trying to get a copy of what it is you're looking at, so——

Mr. FLAKE. Yes, I'll be glad to hand it over.

Mr. WATT [continuing]. Will be available to all of the Members of the Committee.

Mr. FLAKE. My time is up, but I appreciate it.

If I could, a follow up for Mr. Ross: Do you see any problem with this? Do you think it is right to sue to seek to overturn an election? Or would that be an example of funds used that could be better spent serving the poor?

Mr. ROSS. I'd answer you this way: The priorities of local programs funded by LSC are set by local boards and the communities in which they serve. And so the priorities or use of their resources as determined locally is what governs what they do, aside from the congressional restrictions and the regulations of LSC.

If you would look at section 1608.6 of the LSC regulations, there is a specific regulation that deals with political activity. And section 1608.6 deals directly with those that are applicable to attorneys and to staff attorneys.

This, too, is like the discussion about what the Erlenborn commission did about "is." You have to define what political activity is, and you have to compare it section 1608.7, which deals with the

attorney-client relationship and the right of Legal Services lawyers to represent clients properly.

Mr. FLAKE. Just one, very quickly. Mr. Erlenborn, are groups ever barred after significant activity like this, suing on behalf to overturn elections or clearly engaging in political activity? Has a group ever been barred from receiving LSC funds forever?

Mr. ERLENBORN. I don't know that there's anything that's on all fours, but there are programs that have been shut down for violations, and those programs were succeeded by others that did comply with the regulations.

Mr. FLAKE. Mr. Boehm?

Mr. BOEHM. Yes, if I could answer that. Let's look at the case we're looking at. Let's look at Texas Rural Legal. Not only were they not shut down after playing election politics, which, coincidentally, one of their lawyers went off to be executive director of the Texas Democratic Party right before this case, just a few months before.

But not only are they not shut down, but if you look at LSC's own Web page, you see the TRLA now has a bigger service area and gets more money than ever. So the lesson is, engage in politics, try to deprive military people of their vote, and the result is, we'll give you more money.

Mr. FLAKE. Wouldn't it be prudent, Mr. Erlenborn, to say that lawyers who work for Texas Legal whatever, if they go on that they—any firm that they're representing or engaged with shouldn't be able to receive LSC funds as well?

Mr. ERLENBORN. We don't look into issues of individuals. They should be taken care of by the program under the—certainly under the regulations that the program has to comply with. And it should be a matter of discipline with the board of the individual program.

Mr. FLAKE. Thank you. And I thank the Chairman for letting me go on.

Mr. BARR. Yes, sir. I thank the gentleman.

The gentlelady from California, Ms. Waters is recognized for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman. I yield a minute to the gentleman from North Carolina.

Mr. WATT. I thank the gentlelady for yielding.

I just wanted to clear up one thing, and set the members of the Legal Services Corporation Board at ease. I'm looking at these documents now, and my colleague may be, by oversight—but the Web page to which he's referring is the Web page of something called TaxRebatePledge.org. It is that Web page that identifies Texas Rural Legal Aid, Inc. as one of those organizations that is fighting against the Bush Agenda. It is not the Texas Rural Legal Aid's Web site that self-identifies itself in that way.

So I presume that what he wants you to do is go and discipline the TaxRebatePledge.org for exercising their free speech rights, because they can put up whatever they want on their Web page and identify—I guess they could identify me as somebody who's fighting—they'd be right. [Laughter.]

They might identify the gentleman from Arizona as somebody who's identifying—who is fighting the Bush agenda. They would probably be wrong, but it's their free speech rights to do that.

And I want——

Mr. FLAKE. Will the gentleman yield?

Mr. WATT. I hope you all won't spend a lot of time——

Mr. FLAKE. Will the gentleman yield?

Mr. WATT [continuing]. Using Legal Services' money to investigate this, because I don't think you're going to find that it is as has been represented.

It's Ms. Waters' time, so——

Mr. ERLENBORN. Mr. Watt, if I might say, any complaint that comes from the Congress, in particular, will be investigated. So that if Mr. Flake would like to have us investigate this, I expect we will have a complaint in writing, and I'll guarantee you that we'll look into it.

Mr. WATT. I yield back to the gentlewoman.

Mr. ERLENBORN. And I wish you had told us about this earlier, instead of waiting until now.

Mr. FLAKE. I learned 10 minutes ago, just 10 minutes before the hearing.

Mr. WATT. We think maybe his staff may have misled him about what these things were, then.

Mr. FLAKE. Not at all.

Mr. WATT. I yield back to Ms. Waters.

Ms. WATERS. Well, thank you. I don't really have any questions. I think my position about Legal Services Corporation is very clear.

I don't know how I would be able to service my constituents without them. They have, over the years, just been extremely helpful in providing just basic legal services to people who have no where to go. A lot of the complaints, I think, are unfounded. Congress has made some decisions. Again, if Legal Services are in violation of the law, then you have the ability to not only investigate them but to take away the funding, I suppose.

I just hope that one day that—well, I hope I'll be here long enough to get back the funding that Legal Services needs to do the job. I don't know that I've heard any answers coming from this panel or from anybody—and I can't say "from this panel," because I really didn't listen that closely—about how to provide services for the poor without having an entity such as legal aid. And I find it very, very difficult to separate providing services from the poor—for the poor from helping to provide input on public policy. It seems to me that the two are inseparable, and I welcome that kind of input.

So I'll yield back the balance of my time.

Mr. BARR. I thank the gentlelady.

I have a few more questions, and then, Mr. Watt, you may have some more also. I'll be glad to recognize you.

And Mr. Flake apologizes for having to leave for another engagement.

We will be, though, submitting additional questions in writing. There are a couple I would like to address briefly, though, before we end the hearing today, regarding, for example, competition for LSC grants.

Mr. Erlenborn, I know you're familiar with the 1997 Philadelphia case in which a private law firm named Dessen, Moses & Sheinoff placed a competitive bid to set up a new and arguably more effi-

cient agency in the five-county region around Philadelphia. However, the Dessen law firm was forced to withdraw its bid because of tremendous pressure, including picketing against them by Legal Services lawyers, in violation of statute and Federal regulations.

For example, one of the lawyers that was picketing against their competitive bid, against them being awarded the bid, was Roger Ashodian, president of the Delaware County Legal Assistance Agency. He apparently was the same attorney who had been sanctioned by the court in 1992 for unethical tactics to increase litigation costs in a lawsuit that had been filed against a nonprofit group that provided affordable housing for the poor. That's background from the *Cottman* vs. *Flower Manor* case.

What sanctions—first of all, is this gentleman still in that capacity, Mr. Ashodian?

Mr. ERLENBORN. I have no idea, nor do I know from what you've told me if he was doing this on company time or on his own. I think he has some first amendment rights, if he was doing it on his own.

That doesn't mean I am happy that he did it.

Mr. BARR. Do you think that this was improper?

Mr. ERLENBORN. Improper in the——

Mr. BARR. For Legal Services attorneys to——

Mr. ERLENBORN [continuing]. Sense of——

Mr. BARR [continuing]. Be picketing against a private firm that had submitted a bid and was seeking to obtain a contract for the provision of those legal services.

Mr. ERLENBORN. I would not say that I think it's improper because I don't have all the facts. I would say that if he is not, as I said a minute ago, on company time, working for Legal Services, he has not, because of working for Legal Services, given up his right to—his first amendment rights to expression.

And that's all I can say without knowing more about the case.

Mr. BARR. Is this the first you've heard of this case?

Mr. ERLENBORN. I've heard of the—not of the picketing, necessarily. I don't recall being told about that. But I do recall that our staff ultimately was told by the attorneys—it was a law firm, as you mentioned—that they could not live under the rules and regulations of the Legal Services program, and they decided that they would not take on being the grantee although they had won the competition.

Mr. BARR. So the position of the Legal Services Corporation is that this firm did not withdraw because of the picketing or pressure but because they changed their mind after submitting their bid?

Mr. ERLENBORN. I cannot say that's the position of the Corporation, because, as I said, I'm not really aware of the person walking up and down with the banner or whatever he had. I'm not familiar with those facts.

Mr. BARR. So, actually, Legal Services Corporation has taken no action against any of those who picketed?

Mr. ERLENBORN. Again, I don't know much at all about the picketing. I could not answer. I'd be happy to find out and respond to that question.

Mr. BARR. I'd appreciate that.

With regard also to competition, have there been any Legal Services grantees who have lost their grants, not through consolidation of programs, but to a new competitor?

Mr. ERLENBORN. Yes, I—again, I'm not prepared to tell you exactly when, how many, but would be, again, happy to furnish that.

I do know that there have been some that have lost their status and another grantee came in and took over that service area.

I'll be happy to furnish you all the information we have on that.

Mr. BARR. But you don't have any idea today whether it's been one, two, 100?

Mr. ERLENBORN. No, Mr. Chairman, I don't. And if I had realized that that was one of the questions you wanted me to answer, I could've done my research and answered your question today.

Mr. BARR. Well, we did talk about it yesterday, and I specifically asked—forewarned you that we would be going into questions regarding competition and asked for it at that time.

Mr. ERLENBORN. Yes. I have a lot of information about competition that didn't happen to do with that particular case.

Mr. BARR. Well, I'm not talking about a particular case.

Mr. ERLENBORN. Well, I don't recall you asking the information as to has a grantee been decertified and a new grantee taken its place.

The answer, I understand, is yes. How many and where, I can furnish that to you.

Mr. BARR. I'd appreciate that.

Mr. ERLENBORN. But I did not understand you were asking that.

Mr. BARR. How many and also when, please.

You mentioned that there have been Legal Services grantees who have lost their grant funding. Is this for violation of regulations of the LSC Act?

Mr. ERLENBORN. Again, not having an opportunity to research that, I can't answer your question.

I did, in answer to just the prior question, hear an affirmative from the staff behind me, so I feel that they do have cases, which they can research and give you the information about.

Mr. BARR. Okay, if you could get us those details, too, I'd appreciate it.

At this time, I've got a few more questions, but I recognize the gentleman from North Carolina, if he has any additional questions, for 5 minutes.

Mr. WATT. Mr. Chairman, I don't have any more questions. I would just tell you, on this issue that you're raising about competition, from my own personal experience, that there was a vigorous, vigorous competition, at least on the front end in North Carolina. I got a lot of calls from people who were—various entities who thought that they wanted to provide these services. And then the inquiries started to taper off, and I started to make inquiries myself. And a number of them who thought that this was a wonderful, wonderful thing started to see how difficult it would be to comply with the Legal Services Corporation requirements, how time-consuming this would be.

In a lot of cases, the law firms were approaching this as if it could be a major "profit center" in their law firms. And once they got beyond this kind of superficial evaluation of it and found out

that it wasn't going to be a "profit center," the glitter went away very quickly.

So this whole notion that you can put this out to competitive bids and there's going to be people coming out of the woodwork to perform these services for poor people, is more of a theoretical notion, I think, then a practical notion. And most lawyers and law firms I've known who have gone beyond just a superficial evaluation have very quickly determined that.

So I just weigh in, and you can think about what most law firms are thinking about. You know, they—well, let's set up this kind of subsidiary out here to serve the poor, and let's treat it as a profit center. Most of them who are willing to devote time to this are doing it through the pro bono process. And it is magnificent the work they are doing. But few of them are willing to jump into it full time with all four feet, so to speak.

I yield back.

Mr. BARR. I thank the gentleman.

Does the gentlelady from California have any additional questions? And if so, she's recognized for 5 minutes.

Ms. WATERS. No, thank you.

Mr. BARR. Thank you.

Just a few in follow-up, then, if I could, please.

Going back to reference an earlier discussion we had, Mr. Erlenborn, regarding what is the definition of "is" is, the—we would all agree, I think, that the Legal Services Corporation is subject to the Government in the Sunshine Act, correct?

Mr. ERLENBORN. Yes.

Mr. BARR. Could you explain to us, then, why—how is it that the deliberations on interpreting that particular regulation that we've gone over were made in closed-door session?

Mr. ERLENBORN. I'm glad——

Mr. BARR. Session or sessions?

Mr. ERLENBORN. I'm glad you asked that question. First, let me say that we published in the—the fact that we were going to have hearings on this issue. We invited people to send in papers, expressing their position on this issue.

Every one of those was accepted, was read by the five members of the Commission, and everyone who asked to be heard publicly was granted the right to testify and did testify before us in the two hearings that we had.

Now, to get to—specifically to your question, the Commission had no authority to make any decision, but rather to make a recommendation to the general counsel and to the Board of Directors. And, therefore, there was no Government in the Sunshine issue. There was no authority, merely five law professors getting together and deciding that they could give an opinion to the Corporation.

Mr. BARR. I'm informed by Counsel that the session which deliberated the final decision was not noticed publicly.

Mr. ERLENBORN. Actually, it occurred not at a specific point in time but over several weeks or, actually, probably a couple of months of drafting the Commission report and sending it back and forth. And as I say, there was no obligation under the Government in the Sunshine Act to give notice of any of the things we did. We

just voluntarily gave notice of the hearings, and they were well-attended.

Mr. BARR. Do you have a copy of the transcript of those proceedings?

Mr. ERLENBORN. At this point, I don't recall whether we had a transcript. I think we did, but let me ask—I'm told that we do have the transcript and we can make it available.

Mr. BARR. And that would be for——

Mr. ERLENBORN. And would you like to have us send you a copy of the transcript?

Mr. BARR. Yes. Yes, we would.

Mr. WATT. Mr. Chairman, might I just inquire——

Mr. BARR. Sure.

Mr. WATT [continuing]. If you would yield.

Be clear about what we're talking about a transcript of. I presume that Mr. Erlenborn is talking about a transcript of the actual testimony. If you're talking about a transcript of the trading of papers and the phone conversations, which seem—I just don't want there to be any—it sounds like you all may be saying different things.

Mr. ERLENBORN. I thank you for that clarification.

Mr. WATT. I don't know that that's the case.

Mr. ERLENBORN. And you're right. We don't have a transcript of what was sending paper back and forth, sometimes telephone conversations. But, again, we had no obligation to do that.

Mr. BARR. What I'm talking about are the records that are required to be kept pursuant to section 1622.8 of the CFR, chapter 45 CFR.

Mr. ERLENBORN. Required by whom? By the Commission?

Mr. BARR. Yes.

Mr. ERLENBORN. I'm advised and was advised at the time that the Commission was working that we're not subject to the Government in the Sunshine Act. We had no authority. All we did was to make a legal interpretation and give that advice to the Corporation.

Mr. ROSS. Mr. Chairman, may I offer some——

Mr. BARR. We're not—I hope we're not getting involved in another Clinton exercise here, where you—the Commission itself, the Corporation itself, is subject to the Sunshine in Government Act, but, in an effort to get around that, they set up an outside Commission or a group of people to do the work for them and then claim that that group, even though they're operating for them at their behest and under the control of the Corporation, they're not subject to the Sunshine in Government Act.

Mr. ERLENBORN. Well, we had—the Commission had absolutely no authority to make any decisions. All we could do is to have a legal opinion concurred in by the five law professors and the Corporation was free to do whatever they wanted to with that. So we were not covered by the Government in the Sunshine Act.

Mr. BARR. Here, again, the plain meaning is subject to dispute. It says, "Every meeting of the board, a committee or a council shall be open in its entirety to public observation."

Mr. ERLENBORN. That's correct. And under that wording, I've been advised that we were not subject to the provisions of the act. Had no authority whatsoever.

Mr. BARR. I'm sorry. I'm missing something.

The plain meaning, the plain language here—I'll repeat it: "Every meeting of the board, committee or council shall be open in its entirety to the public." Does that not cover the LSC and those entities operating at its behest and under its control, such as the Erlenborn Commission?

Mr. ERLENBORN. Well, I'll have to check this, but I don't believe that the Board ever took a position on this, but the Corporation, with the aid of the general counsel, gave advice to the programs that this was the interpretation that the Commission recommended and it was being adopted by the Corporation. The act of the Corporation in adopting this, if there was any kind of a hearing—and I don't recall that there was—it was just an interpretation.

Mr. BARR. The language of the statute doesn't refer to a hearing. It says that every meeting of the board or a committee or a council has to be open in its entirety to the public.

Are you saying that the Legal Services Corporation or any entity operating within its structure or at its request or under its control is not subject to that open meetings requirement?

Mr. ERLENBORN. That's right. We were neither——

Mr. BARR. Your counsel has advised you that these provisions of the Sunshine in Government Act don't apply?

Mr. ERLENBORN. That's right. We were not acting as the Board. We were not acting as an arm of the Board. We were merely giving an opinion.

Mr. BARR. I mean, I'm talking about the Commission here; it's the Erlenborn Commission report. And down at the bottom, it says very clearly it's Legal Services Corporation. I mean, I think here again common sense would tell us that the Commission was operating under the direction of, subject to the control of, within the legal structure of, the Legal Services Corporation.

Mr. ERLENBORN. Let me volunteer to have the general counsel—if he's here, he probably would be doing it anyhow——

Mr. BARR. Who paid for——

Mr. ERLENBORN [continuing]. Give you the——

Mr. BARR [continuing]. The report?

Mr. ERLENBORN. The Corporation.

Mr. BARR. Well, I mean, it seems to me that——

Mr. ERLENBORN. I don't think——

Mr. BARR [continuing]. Both the Corporation and, in this case, the Commission is subject to the Sunshine in Government Act. And all of those meetings were required to be open fully to the public.

Mr. ERLENBORN. All the public hearings were, and the give and take over the telephone and my letters and e-mail were not open to it and did not have to be——

Mr. BARR. I'm not talking——

Mr. ERLENBORN [continuing]. In our opinion.

Mr. BARR [continuing]. About telephone conversations. I'm talking about all of the meetings of the Commission.

Mr. ERLENBORN. We had two meetings.

Mr. BARR. Well, then both Commission—or the meetings, those were both fully open to the public, noticed——

Mr. ERLENBORN. Absolutely.

Mr. BARR [continuing]. Publicly?

Mr. ERLENBORN. Absolutely.

Mr. BARR. They were noticed publicly?

Mr. ERLENBORN. There was one in North Carolina and one in California, and both of them—notice was published. It was open to the public.

I didn't realize that you were talking about that. I thought that you were talking about the deliberations of the Commission members, and that was not in open sessions.

Mr. BARR. I think we're still on a Clinton treadmill here.

Mr. Boehm?

Mr. BOEHM. Yes, back from '91 to '94 I served as counsel of the Legal Services Corporation Board. There's no question they're governed by Government in the Sunshine. There's no question that that extends to special committees of the board, which is exactly what this was. And even though they did notice in the Federal Register the two public open sessions, the deliberation session, which would not be behind closed doors if it were a regular LSC board meeting or anything else, was where they closed the doors.

From a public policy standpoint, I think it was—Attorney General Meese earlier said there's two sides to every issue. They appointed a board of five people. It had vital interest to growers all over the place. There was not a single one of those five representing agricultural interests. Their mission was to try to turn legislative language that says "is present in the United States" into meaning "was." That can be embarrassing in a public setting.

And I think Congressman Flake used the expression "doesn't pass the laugh test." The public was entitled to be in that meeting. That meeting would have been noticed in the Federal Register. It wasn't noticed and the five met behind closed doors and came up with a, frankly, a preposterous twisting of the language, that "is" does not mean "is," "is" means "was."

And I don't think—even the LSC regs about Government in the Sunshine talk about special committees of the board. So if they have some legal opinion that suddenly turns 25 years of Government in the Sunshine law on its head, you know, I'd like to see what that opinion was. I doubt they have a written legal opinion.

Mr. BARR. Thank you.

We would appreciate any additional information that you all can provide on that, because this is the sort of thing that does concern us, and it concerns others as well.

Just a couple of other questions, Mr. Erlenborn, and then we'll submit some additional ones in writing.

I think there was reference—and I forget which one of the witnesses referred to it—a letter by Congressman Hal Rogers back in September of 2000, in which Chairman Rogers says that grant recipients have repeatedly denied the Office of Inspector General access to information.

Is that practice still continuing? Or is there complete access that the OIG has to all LSC and grantee records?

Mr. ERLENBORN. I am unable to answer that question. I don't have that information.

Mr. BARR. Are you familiar with this letter?

Mr. ERLENBORN. No, I'm not.

Mr. BARR. September 14, 2000, from Hal Rogers.

Mr. ERLENBORN. If——

Mr. BARR. I mean to Hal Rogers from the Inspector General of Legal Services Corporation.

Mr. ERLENBORN. I do not recall seeing the letter. I may have it, but I don't recall.

Mr. BARR. Okay. Apart from that letter, though, the fundamental question is, are all records of the LSC and its grantees available to the Office of the Inspector General at this time?

Mr. ERLENBORN. I can only give you my opinion. I don't know for certain what the answer to your question is.

And, again, with 55 years' experience as an attorney, I usually don't like to give opinions without knowing all the facts. I would expect that our records would be open, but that's only my expectation. I don't really know what——

Mr. BARR. Should they be?

Mr. ERLENBORN. I would think so. But, again, there could be exceptions. I don't know. I have to have the facts before I decide.

Mr. BARR. We're talking about a policy matter here.

Mr. ERLENBORN. I understand.

Mr. BARR. So you aren't prepared to state that they certainly should be available fully to the Office of Inspector General?

Mr. ERLENBORN. It depends. If, for instance, these are personnel records that reveal things that are not of interest to the Inspector General, I would think that they probably would not want to, but if—or would we want them to see personnel records like that.

Mr. BARR. Are there limitations, then, in your view on what the Inspector General can review?

Mr. ERLENBORN. I have no idea. I have no way of telling you, because I don't know what the facts are.

Mr. WATT. Mr. Chairman?

Mr. BARR. It's not a factual question.

Mr. ERLENBORN. Well, from——

Mr. WATT. Mr. Chairman, would you yield?

Mr. BARR. Certainly.

Mr. WATT. I would, certainly, if I were a client of the Legal Services Corporation, have severe reservations about the Inspector General being able to have access to my medical records, my case files.

I think there are a number of exceptions. And it seems to me that Mr. Erlenborn has said, as a general proposition, he believes that the records of the Legal Services Corporation should be open to the Inspector General. But apparently you're not hearing him say that.

But every general rule——

Mr. ERLENBORN. Has exceptions.

Mr. WATT [continuing]. Generally has exceptions. And I think that's what he's saying. And I can——

Mr. ERLENBORN. I told, Mr. Watt——

Mr. WATT [continuing]. Just think of some things in my own mind that I would want to be exceptions. I don't know whether that's what this is all about.

But I think the general rule is that records should be available, but that there are always exceptions to every general rule.

Mr. ERLENBORN. I'm told that that is the general rule, and one of the exceptions, maybe the only exception, is attorney-client privilege, which I think we should understand.

Mr. BARR. Has LSC ever waived their right of access to any outside group?

Mr. ERLENBORN. Are you talking—there's been a problem of access not to the Corporation but rather the Corporation not being able to have access to records of some of the programs. I don't know which way you're addressing this question.

Mr. BARR. It's my understanding that LSC management has accepted denials of access to records when attempting to conduct its own compliance inspections and acceded to ineffective inspection procedures suggested by the grantees under review.

For example, after the Legal Aid Bureau of Maryland denied the OIG access to information in 1999, LSC management agreed to a protocol for conducting compliance reviews that accepted what were called unique identifiers in lieu of client names.

In December 1999, LSC management entered into a written agreement with Westchester/Putnam Legal Services—I guess that's up in New York—to accept unique identifiers, again, waiving its statutory authority.

Is this a process that you're familiar with?

Mr. ERLENBORN. Now I know——

Mr. BARR. And is it——

Mr. ERLENBORN. Now I know the process you're talking about. Yes, some of these things—I think the Maryland case is one. It was an agreement between the Inspector General, who was doing an audit of the program. There was an agreement to get around a claim of attorney-client privilege, so that the Inspector General could get sufficient information to complete his audit without necessarily having the names of people exposed.

And so this happens. And a number of times, the Inspector General has done this, work out a problem instead of going to court, getting the information the Inspector General needs.

Now, they've also—our corporate staff goes into the—tries to get information from the records of the programs, and sometimes they have to negotiate to find a way of doing it that is not violating attorney-client privilege and yet allowing our staff to get the information to do an audit on their behalf.

Mr. BARR. I would appreciate it, because there are some—I think some pretty complex but fairly important issues involved in this discussion, if you could, please, take a look at the September 14, 2000, letter from the Inspector General to Hal Rogers. And I'd appreciate your thoughts on that and your response to it, please.

You did testify, Mr. Erlenborn, that the efforts to address the overcounting and so forth, that the error rate, which you identified in 1999 as 11 percent, dropped I guess about 60 percent or so the next year to 5 percent. What was the criteria and who conducted that survey?

Mr. ERLENBORN. This is based on audits by our staff, and it—it's audits that they did in conjunction with the programs who are doing a self-inspection.

What had preceded that were letters going to all of the programs, advising them the procedures that they should follow to have the best possible records.

And I would reiterate that this all began with the Corporation and the LSC Inspector General having discovered that the records were not accurate and remedial action was taken before this became public and became a cause celebre on the Hill. And we've done all in our power to see that we have accurate figures.

Now, I would really question the assumption made by my friend George Gekas that we were trying to inflate these figures so that we would get more money from the Congress. We were lucky to get money just to stay alive. There was no attempt on our part to try to flimflam the Congress.

Mr. BARR. What was the reason—at least that would've provided a logical explanation for the overinflation. What was the reason for the overinflation?

Mr. ERLENBORN. The inflation was caused by outmoded procedures. A good deal of that problem was on the part of the Corporation not giving the programs sufficient information and guidance, which we have done in abundance since this issue was raised. And that's what brought the count down, the error count down.

Mr. WATT. Would the Chairman yield on that point?

Mr. BARR. Certainly.

Mr. WATT. We did have a hearing or two about this when we were in the heat of this battle. And my recollection of what was going on is that—is what goes on in a lot of other Federal agencies and non-Federal agencies: Instead of counting clients, they were counting client—some of the Legal Services organizations in the field had started counting contacts. So if you got a series of phone calls about a case, that might show up as—even though it was one case, it might show up as more than one client contact.

And they understood what they were doing. They were keeping these records for the purpose of trying to allocate personnel to receive those calls, how many personnel they needed. So there were all kinds of different records being kept by different organizations, and there was no standard.

And what the Legal Services Corporation did was to set some standards, at least for reporting to the Congress, so that there wouldn't be all kinds of different standards in different Legal Services organizations that were grantees.

And I'm not sure I was ever convinced that there was any sinister motivation. In fact, most of the motivations I heard were rational explanations: "We needed to know how many phone calls we were getting so that we would know how much personnel we needed." "We needed to know how many pieces of correspondence we were getting in as opposed to cases so that we would know how to budget for responding to those." I mean, there were all kinds of rational explanations.

And I had thought that this issue had been resolved a good while ago. I mean, I think this is old news, Mr. Chairman. I hope it is.

And if we think it's not, then maybe we should have an independent audit.

But I think the Legal Services Corporation did their own independent audit. They found the problem. They identified it. They reported it. And then they corrected it.

Mr. ERLENBORN. The GAO also looked into it. And all of those things that the GAO recommended the Corporation do to get accurate figures, we have accomplished.

And I might also say, you're talking about what someone might be trying to do—what impetus there might be to give figures that were not accurate. The figures are composed out in the field. Out there, they get the same amount of money regardless of what figures they report, because it isn't based on those figures; it's based on the poor in the service area. And so there's no reason for them to give inflated reports.

When that comes to the Corporation, all we do is to add these numbers together. We do not change the numbers. There is no way that we could get more money by changing the figures. There's no reason why we would do that. And we have never done it.

Mr. BARR. How long after Inspector General Quatrevaux sent this letter to Chairman Rogers in September of 2000 was he fired by the Board?

Mr. ERLENBORN. I have no idea.

Mr. BARR. As I understand it, it was shortly thereafter.

Do you know, Mr. Boehm?

Mr. BOEHM. Yes, there was a news article in Legal Times December 5th, right—you know, we're talking about 2 months after it saying he was no longer with the Corporation and wasn't available for comment.

And I have a copy of the letter here. It's interesting, in the letter itself, the Inspector General says that his efforts to get access to documents were being undermined by the LSC President and the LSC Board and that they were not—they were waiving their own statutory access to records.

And I just saw a case in here, this *Westchester* case that took place in September, that was a complaint that I had filed. The program legal director there, worked there close to 20 years, wrote a letter to the editor—his name was John Hand—saying that in his program, they knowingly falsified the case counts in order to deceive their funders.

He had subsequently left. I filed the complaint. I said, well, here's a guy that worked there 20 years; he's saying they falsified their numbers; please investigate.

LSC dismissed my complaint, and now I happen to see in this letter that one of the programs that was not forthcoming with information that the IG wanted was Westchester.

There is a lot more to this story than that. The person, by the way, who discovered the case overcounting was an individual with 25 years' experience in the Federal IG service, a guy by the name of Fred Gedrich, who was here earlier today.

He quit after years of experience in the government because he felt that the Board and the President and, in that case, even the IG, was not telling Congress what they should've told them. He left

his job in order to tell Congressman Latham, LSC is covering up widely inflated case counts.

Everything he said was confirmed by GAO in their first investigation. Everything was confirmed in an Associated Press investigation. And then there was a second GAO study that said that what LSC was telling Congress, that they had solved the problem, this was the GAO report that came out in September 1999, that they had not done everything they should've done. Now they're saying they have done it again.

But, again, this is based on their own assessments and not some objective third party. There's been a history in this case of covering up, not investigating, people leaving their jobs because they felt the truth wasn't being told to Congress. And so there's a lot more to this story than just a lot of confusion about cases—programs not knowing what is a case and how to count them.

The record shows every single program that was looked at by GAO had major problems. There were no exceptions.

Mr. BARR. Thank you.

We will be following up on a number of these areas, including one that we have not had sufficient time to go into today. And you all have been very patient, and I appreciate that. And I appreciate the patience of the Ranking Member.

One other area that we will be submitting some additional questions on is—those regarding the spin-off organizations and so-called mirror organizations, to determine if that's a continuing problem.

But, again, I'd like to thank all four members, including General Meese, who had to leave earlier. This was a very, very informative panel, a very distinguished panel. We appreciate the answers to the questions, and your commitment to provide additional material, both in response to questions that have been posed today as well as the additional questions that will be posed.

And particularly in your case, Mr. Erlenborn, we appreciate your public service by continuing to provide guidance.

I think we all recognize, and I can speak for the entire Subcommittee, we do recognize that changes have been made. There have been improvements. Our concern is simply to make sure that the continuing problems don't fester and continue to be addressed. And that's the motivation for the questions today, and we look forward to working with you and your predecessor——

Mr. ERLENBORN. Thank you.

Mr. BARR [continuing]. In this regard.

Thank you very much. This hearing is adjourned.

[Whereupon, at 1 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENTS SUBMITTED FOR THE HEARING RECORD

LEGAL SERVICES CORPORATION
v.
FARMERS OF THE UNITED STATES

Most American farms are family-owned and operated. Their profit margin depends on factors beyond their control-usually thought of as weather, and the vagaries of the US marketplace. Few people realize that the most uncontrollable factor affecting the existence of domestic food production in this country is their own government-its domestic and foreign economic policy and its domestic support of anti-agriculture interests.

Fresh market production is the most vulnerable of domestic food production. The fragility of the product does not allow delay in harvesting or storage once it leaves the field, thus putting growers at the mercy of immediate labor supply and market demand.

Despite studies and rhetoric to the contrary, Georgia farmers have faced labor shortages for the past decade. The influx of undocumented workers has masked the severity of the problem, but dependence on this labor force is economically risky and in the minds of many farmers, exploitive. In 1998, a number of Georgia's large fruit and vegetable farmers turned to H2A, an expensive and regulation-saddled program that can supply workers from other countries for seasonal employment on US farms, once the availability of the domestic labor supply has been tested and exhausted.

Since that time, these growers have spent a significant portion of their small profit margin to house, transport, pay and otherwise furnish the highest level of worker protections enjoyed by any industry's workforce. Their workers are all legal, and for that, they should be congratulated and supported in their commitment to complying with immigration and labor laws.

Instead, these law-abiding employers have been constantly subjected to attack by the government-funded Legal Services Corporation (LSC) and its allies, the private, non-profit, anti-farmer legal groups that were formed solely to circumvent the will of Congress.

For example, during the first year of H2A participation in Georgia, the local LSC affiliate, Georgia Legal Services' Farmworker Division was invited to participate in the orientation of all newly hired workers. In an effort to demonstrate their commitment to compliance, coordination and cooperation, these growers invited representatives of this anti-farmer organization to the workplace to meet workers and ensure that all workers were aware of their rights. A booklet was jointly prepared that included the phone number of Georgia Legal Service, Farmworker Division. In return, the growers asked that GLS notify them of any concerns so that the employer could solve problems before litigation became necessary. The parties agreed and the cooperative agreement was initiated.

Within months, a lawsuit was filed without any notice against these same growers by a Florida-based private non-profit whose operative had attended a Georgia Growers Association orientation and who was allowed to interview workers by GLS attorneys-under the guise of his also being a GLS employee. Shortly thereafter, a GLS attorney solicited, and again without notice, filed a lawsuit against another GGA farmer who had agreed to participate in the GGA/GLS "cooperative program". There is some evidence that the plaintiffs in that action were located and interviewed in Mexico by the same Florida non-profit organization's operative that had earlier posed as a GLS outreach worker.

Following is a list of LSC-sponsored/affiliated threats and actions against Georgia farmers who were participating in the H2A program:

1. Roberson Farms was sued in Puerto Rico on behalf of Puerto Rican workers who left before their contract ended and whose primary allegation was that their housing had been inadequate (although the housing had been inspected and approved by GA DOL repeatedly). Because the cost of litigating the case in Puerto Rico was prohibitive, the Robersons settled out of court. The costs to the grower are not available at this time, but are believed to be more than $250,000.

2. Georgia Growers Association (three members) was sued by Greg Schell of the private, non-profit Florida Rural Legal Services (aided and abetted by attorneys from Georgia Legal Service) in Florida on behalf of three improperly registered

crewleaders who refused to take or send their workers to Georgia because the override offered by GGA was not as much as they wanted. The case was moved to Georgia and although the federal court held that the charges were without merit, Florida Legal Services appealed the decision. GGA then settled to avoid further legal fees. Costs to the growers was $275, 000.

3. Georgia Growers Associated was sued by by Georgia Legal Services Farmworker Division on behalf of Mexican citizens who left their H2A jobs without justification or notice, but wanted the grower to pay the costs of their visas. Costs to the growers was approximately $220, 000.

4. Evans Farms was sued by Texas Rural Legal Services in Texas on behalf of a two workers who, without prior notice to the employer, brought several non-working family members with them to the H2A job but would not accept alternative housing arrangements until the grower could accommodate them. To avoid the cost of litigation in Texas the grower settled at an approximate cost of $17, 500. (Although she was never informed by the Texas Workforce Commission that the job applicants were bringing non-working family members, the Georgia Department of Labor's local representative was also individually named in the suit. This portion of the case was separated, moved to Georgia and settled by the State.)

5. Fletcher Farms was sued by GLS on behalf of several Mexican citizens who left their H2A jobs without notice and alleged that the grower had not properly paid the total cost of their transportation to the job from Mexico. To avoid costly litigation, the grower settled at a cost of approximately $11,000.

6. Taylor Orchards was sued for wrongful termination by GLS on behalf of two Mexican citizens who were fired for fighting during work hours in the packing shed. Although posted rules clearly stated that the penalty for fighting was immediate termination, the employer could not afford the costs of litigation, so the case was settled. One of the workers remained illegally in this country, with full knowledge of the GLS attorney, during all preliminary interviews, etc. Costs to the grower were about

$14,000. (The county sheriff's deputy who responded to the emergency call by the packing shed supervisor and arrested the fighters was also sued as an individual by one of the GLS plaintiffs.)

7. Bland Farms has been the target of several actions by GLS and Texas Rural Legal Services. We have no details of the costs or the outcomes.

8. G&R Farms is presently being sued by GLS on behalf of Mexican citizens who worked there two years ago and who allege that the grower owes them the cost of their visas and some additional portion of their transportation costs. The costs and outcomes of this action are yet to be determined.

In addition, several law enforcement agencies and officers have been threatened with lawsuits by LSC attorneys when, in the course of their official duties, these peace officers' actions were (subjectively) considered "anti-farmworker" or non-responsive to the attorney's cause. The most egregious was a GLS attorney, who after being told to leave private property, made an allegation to the county sheriff that a small municipal police chief in that county was a part of an illegal immigration scam. When the police chief complained about the attorney's behavior and allegation to the State Bar, the attorney's GLS supervisor called the chief and pleaded that the complaint be withdrawn. According to a Bar spokesman, his was not the first bar complaint against this GLS attorney. Apparently, GLS officials believe that, although farmers should not be allowed any lapses of judgment, GLS attorneys are not held to the same high standard of behavior.

A taxpayer funded Legal Services Corporation could and should be this country's best example of our legal community's high regard for the spirit of our laws. Instead, LSC has chosen to use countless "letters" of US law to violate the spirit of equal protection under and from the law.

PREPARED STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

The American Farm Bureau Federation is the nation's largest general farm organization. Farm Bureau's farm and ranch members grow virtually every agricultural commodity that is produced commercially in the United States. They rely extensively upon the employment and use of farm labor, including migrant and seasonal farmworkers and foreign guest workers under the H-2a program.

The farm workplace is extensively regulated by laws and regulations that govern recruitment of farmworkers by farmers themselves and farm labor contractors, transportation and housing, field safety and sanitation, safety in shop areas, mixing loading and application of crop protection products, not to mention wage and hour laws. The laws that apply to the agricultural workplace are strictly construed and enforced.

Since the inception of the Legal Services Corporation (LSC), its grantee lawyers have shown a proclivity to sue farmers for technical and deminimus violations of the extensive laws regulating the agricultural workplace, often treating farmers and ranchers unfairly in the process. Good faith efforts to comply with the myriad of applicable laws are usually meaningless to the LSC-funded "farmworker advocates" and the prosecution of technical violations of the law have offered the means for overzealous LSC-funded lawyers to literally bankrupt a farmer and work against the interests of the farmworkers being "protected."

Farm Bureau believes that the mission of the LSC is to provide legal assistance to those in the United States who need but cannot otherwise afford such services. Experience has shown, however, that mission is too often lost upon the LSC-funded grantees who are more intent on suing farmers, lobbying state and federal legislators and regulators and engaging in other political activities, than attending to the day-to-day legal needs of farmworkers and other needy people.

Farm Bureau supported and continues to support the administrative provisions enacted in the FY1996 Appropriations Act pertaining to the operations of the LSC. Among these important reform efforts were increased LSC staff resources to enforce grantee restrictions, along with restrictions against grantee participation in class action lawsuits, representation of illegal aliens, participation in fee generating cases, solicitation of clients, participation in lobbying, representation of unions and participation in unionization drives. Overlaying these restrictions was perhaps the most important reform of all, that prohibiting a grantee from doing any prohibited activity, regardless of the source of funding. In this manner, Congress sought to ensure that limited legal aid resources would be focused on activities Congress deemed appropriate.

Some in the legal community soon took a dim view of Congress' effort to ensure taxpayer's dollars were going for legal representation of those of needed it but couldn't afford it. Legal challenges to the restrictions were immediately mounted with varying degrees of success. Activist lawyers opposed to the restrictions continue to mount challenges today.

Even when the restrictions do withstand legal challenges, grantees largely ignore them anyway, and their actions go uncensured by the LSC. As a result, and because only LSC can enforce the LSC Act and regulations, and because the LSC is not subject to judicial review, the restrictions enacted by Congress are unenforceable and have thus proven to be ineffective.

LSC grantee lawyers continue to lobby. In Michigan, the Michigan Migrant Legal Assistance Program actively lobbied to defeat a package of farmworker housing reform measures. When the matter was brought to the attention of the LSC by Farm Bureau, a substantive response was long in coming and proved unsatisfactory as to any effective sanctions being imposed.

LSC grantee lawyers have even gone so far as to travel to Mexico to recruit clients to sue North Carolina farmers. While in this instance the grantee organization was fined and defunded, the sanctions imposed were of little consequence as the lawyers and staffers involved simply moved to a new legal aid office funded by the LSC.

LSC grantee lawyers continue to pursue class action litigation despite the clear prohibition thereof by Congress. Litigation commenced in Georgia and California by LSC grantee lawyers for the benefit of "others similarly situated" are clearly proscribed class actions and not representative actions where the identities of each plaintiff must be provided. Regardless of the success of the defendant farmers in defeating these actions, they are nevertheless required to expend substantial sums in legal fees and costs to overcome what are in reality abusive, harassing tactics by LSC grantees.

These and a host of similar problems and abuses cause us to question whether the restrictions Congress sought to impose to stem LSC criticism will ever have the desired effect. Clearly many LSC grantees and advocates have to be regulated. This is evidenced not only by their lawsuit campaign to invalidate the restrictions, but their blatant disregard for the restrictions in their continued actions in direct contradiction of them. Further evidence is the proliferation of shadow legal aid groups that rely on funds other than LSC grants.

Which raises the question, if adequate nonfederal resources exist for these shadow programs, why are federal funds and the LSC necessary? Perhaps the most effective restriction on federal fund use would be, as has been previously suggested, for Congress to stop funding the LSC altogether.

In any event, the issues and concerns with LSC and their grantees present a serious problem to the continued livelihood of farmers across the country. Something needs to be done toward making the 1996 restrictions not only enforceable, but en-

forced. We thank the subcommittee for your attention and urge your continued involvement and commitment to improve the operation of legal services.

PREPARED STATEMENT OF CHARLES WALKER, MANAGING DIRECTOR, NATIONAL PEACH COUNCIL

The National Peach Council represents the country's peach growers. Much like growers of many other fruit and vegetable crops, our members know first hand that the litigation abuses practiced against growers for so long by activist legal services lawyers continue despite the attempt by Congress in 1996 to reform the Legal Services Corporation (LSC) and the programs it funds.

Over more than a decade, Congress has heard about these abuses in hearing after hearing. Rep. Roscoe Bartlett (R-MD-6) chaired hearings before the House Small Business Committee's Subcommittee on Government Programs and Oversight in March 1998 and July 1999, which detailed how clearly abusive legal tactics of lawyers funded through LSC had hurt growers and how LSC had repeatedly failed to curtail activities which Congress had banned in its 1996 LSC reforms. Rep. Bartlett knew first hand how legal services lawyers had literally put the commercial apple orchards out of business in his district by waging a legal war of attrition.

Rep. Ed Whitfield (R-KY-1) has seen the tactics of unprincipled legal services lawyers driving a farmer with a tiny 30 acre tract almost to bankruptcy. One of the tactics used against small farmers in west Kentucky was bringing lawsuits against them in Texas on trumped up allegations. The cost of defending a lawsuit in a distant state is powerful leverage for a small farmer to settle no matter how frivolous the charges.

Rep. Charles Taylor (R-NC-11) also has seen how LSC looks the other way when farmers are the victims of illegal acts by LSC-funded lawyers. And when the public outcry over legal services abuses is too great, LSC goes through the motions of addressing the problem. When a videotape showing legal services lawyers from North Carolina illegally in Mexico recruiting clients, Rep. Taylor called for an investigation. The Wall Street Journal featured the story on its editorial page. LSC - its funding under consideration at the time - told Congress they had fined the migrant lawyer group for the illegal trip and permanently banned it from all future LSC funding. What they neglected to tell Congress was that all of the lawyers involved simply signed up with a newly named migrant lawyers group and continued to get the very same LSC funds.

That's "enforcement" - legal services style.

Dr. Rael Jean Isaac, a noted sociologist who has written for Readers Digest, Wall Street Journal, Atlantic magazine, and other leading publications, spent more than a year researching how legal services lawyers interact with growers, especially in the labor intensive fruit and vegetable sector. Her book, Harvest of Injustice: Legal Services vs. the Farmer, published by the National Legal and Policy Center, is the best account available of the pattern of abusive practices routinely employed by legal services lawyers against growers.

Unfortunately, many of the abuses documented by Dr. Isaac continue.

In 1996, Congress wrote a series of reforms into the annual LSC appropriations bills seeking to finally curb some of the controversies that have plagued LSC from its inception.

The reforms were opposed by legal services lawyers, the LSC board and the LSC President.

The LSC board found ways to water down the restrictions and discover loopholes, which were nowhere in the original legislation. Sometimes Congress could stop the games being played by LSC by forcefully admonishing LSC officials at an appropriations hearing. That was the case in 1997 when LSC Vice Chairman John Erlenborn attempted to defend a proposed regulation in which LSC allowed attorney's fees in cases involving the disabled poor, despite a complete ban on such fees by Congress. Chairman Hal Rogers (R-KY-5) stated bluntly, "You can't seem to help yourself. You do not grasp reality. Some of us are losing patience."

But LSC kept undermining the reforms.

The special status of LSC as a private corporation and not a government agency allows it wide latitude to selectively enforce or not enforce any restriction. Under the LSC Act, only LSC can enforce the Act and regulations.

Also, LSC's failure to enforce any restriction is not subject to judicial review of any kind.

When a federal judge in South Carolina found that LSC had improperly dismissed a complaint about legal services lawyers who had clearly violated the restriction against lobbying, LSC simply appealed on the grounds that it was not subject to

judicial review. LSC won and the legal services lawyers who broke the lobbying ban were never disciplined.

If LSC can ignore a federal judge, what chance does a farmer have?

LSC's President referred to this special status, in a letter to a member of the LSC board, as LSC's "absolute discretion" on enforcement issues.

Perhaps the most important Congressional restriction violated by LSC and its taxpayer-funded lawyers is the restriction against representing an alien "unless the alien is present in the United States." Section 504(a)(11) of Public Law 104–134

In the wake of the illegal Mexican recruiting trip scandal, the question arose as to why legal services lawyers were representing aliens who had left the U.S. one, two, or even three years prior to the legal assistance starting. Because the language of the appropriations law was so plain - yet legal services lawyers wanted to ignore it - LSC stepped in with a "special commission to determine what "is present in the United States" meant. No one representing agriculture was on the commission and its deliberations were in closed-door sessions in violation of the Government in the Sunshine law, which applies to LSC, its board and any special committees of its board.

The secret sessions of the special commission determined that "is present in the United States" really meant "was present in the United States" and it allowed legal services lawyers to represent alien clients living in foreign countries. Growers found themselves being sued by alien workers living in Mexico, making the legal defense of the lawsuit that much more expensive. This greatly aided legal services lawyers known for filing nuisance lawsuits because growers would often be forced to settle on flimsy or nonexistent allegations because they could not afford to defend the lawsuit.

Growers who knew that this thinly veiled type of extortion was based on bogus facts still had to consider the huge legal bill to expose the racket. Some were so incensed at the injustice of the action, they did just that. In a case heard in Franklin County District Court on July 30, 2001, (Franco-Favela v. Leonard Wester and Wester farms), it turned out that the charge that a guest worker who legal services lawyers claimed was fired in 1996 for not meeting a production quota of bell peppers was wrong on both counts. The worker acknowledged that he had signed a voluntary resignation and the evidence showed that bell peppers were picked at an hourly rate, not on a production quota. The judge held that the "plaintiff's claims against defendants lack merit."

This case illustrates why small fruit and vegetable growers across the country are so outraged - and legitimately so - against LSC. The fact that these cases are funded by their own tax dollars compounds the outrage. As does the fact that Congress plainly stated that no alien may receive legal assistance from a legal services lawyer "unless the alien is present in the United States."

The case also shows that the lame duck LSC board will not only ignore federal judges, they'll ignore Congress as well.

Growers, especially in Georgia and California, have also found out that the ban enacted by Congress on class actions by legal services lawyers has been ignored. When legal services lawyers filed representative actions against growers seeking to represent a class of hundreds of unidentified legal services clients, LSC ignored all complaints, arguing that a representative action is not a class action. This LSC interpretation was viewed in many legal circles as laughable.

First, Congress had passed the ban on class actions with no exceptions.

Second, every major law dictionary and all legal literature considers a representative action a class action. Ballentine's Law Dictionary defines representative action as "same as class action."

Third, other Congressional reforms require legal services lawyers to name all parties at the onset of a lawsuit - something not done in the illegal class actions.

Congress received numerous complaints about the class actions which targeted farmers more than any other group. The House Appropriations Committee explicitly warned LSC to enforce the class action ban in House Report 106–680, which covered Fiscal Year 2001, "The Committee also reminds the Corporation that its grantees are prohibited by section 504(a)(7) of P.L. 105–119 from participating in class action suits and directs the Corporation to ensure its grantees comply."

What could be more clear?

LSC ignored Congress yet again. The class actions continue to this day.

Frankly, the history of LSC has been the history of federal tax dollars used to unfairly target farmers with unfair lawsuits. There's a saying that every small business is just one lawsuit away from being out of business. Most farmers are small businessmen. All too often the farmers targeted for legal shakedowns are the ones who can least afford it.

The fact that these legal services lawyers are now thumbing their noses at federal judges and Congress shows that they have no intention of obeying the reforms.

At the minimum, Congress should cut their budget and President Bush should appoint 11 honest LSC directors who know what "is" means, know what a class action is, and will faithfully enforce the reforms.

PREPARED STATEMENT OF SHARON M. HUGHES

The National Council of Agricultural Employers (NCAE) appreciates the opportunity to submit this statement on the activities of Legal Services Corporation grantees in relation to agricultural employment issues. NCAE's membership includes agricultural employers in all 50 states who hire the vast majority of the national agricultural workforce. Our members include farm cooperatives, growers, packers, processors and agricultural associations. Many of our members utilize the H-2A temporary foreign worker program, which is a focal point for LSC-funded lawsuits.

Labor is an essential input in farming. Fundamentally, all commercial farms rely to a greater or lesser degree on hiring labor to perform certain essential tasks. The 1997 Census of Agriculture reported that more than 650 thousand farms hire labor directly, and reported 3.4 million hires. More than 225 thousand farms also hired contract labor. Total expenditure for hired and contract labor in 1997 was $17.8 billion. This was nearly 12 percent of total farm production expenses, or $1 of every $8 spent by farmers. Farmers spend more for hired labor than they spend for seed, fertilizer, agricultural chemicals, petroleum products, interest or property taxes. In fact, after purchases of livestock and feed, hired labor accounts for greater farm production expenses than any other category of expenses reported by the Census of Agriculture.

The H-2A program in the Immigration and Nationality Act, the program Congress enacted to deal with legal labor shortages in agriculture, is unworkable and in a state of paralysis. The H-2A program is administratively cumbersome and imposes uncompetitive requirements on employers. Unlike other temporary worker programs, the H-2A implementing regulations are over 40 pages long and the Department of Labor internal operating procedures manual interpreting the regulations is over 300 pages. But, the threat of LSC-funded lawsuits against any employer who seeks to utilize the program is one of the main reasons growers shy away from its use. NCAE is working with members of the House Judiciary Committee to reform the administrative side of this program and bring it into the 21st century. These reforms should eliminate some of the "gotcha's" that LSC grantees utilize to harass agricultural employers out of the H-2A program.

Grantees, however, are always searching for new issues upon which to base lawsuits—pushing the envelope on requirements of federal labor laws and the restrictions Congress has placed on their activities. Other representatives of agriculture will present statements on grantees' use of mirror corporations to avoid Congressional restrictions on class actions and alien representation. This statement will address the contortions of the Erlenborn Commission Report of 1999 relating to the alien representation restriction, and the continued filing of Fair Labor Standards Act (FLSA) lawsuits based on issues the courts have held are without merit.

Erlenborn Commission Report

In 1998, LSC attorneys from North Carolina were caught on videotape recruiting alien clients in Mexico in violation of restrictions in both appropriations law (PL 105–277) and LSC regulations (45 CFR Part 1626). The relevant section of the law states "None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity . . . (11) that provides legal assistance for or on behalf of any alien, unless the alien *is present in the United States* . . . (emphasis added)." After an investigation called for by Rep. Charles Taylor, the LSC fined the grantee $17,000 for providing legal assistance to aliens who had never even been in the United States.

Afterwards, the LSC Board scrambled to find a way to circumvent the restriction. A "special commission" was appointed under the Chairmanship of the Honorable John N. Erlenborn and then filled with pro-LSC members. Against the provisions of the Government in the Sunshine Act, the commission met behind closed doors. In tortuous report language, the commission decided that the law denying legal assistance to any alien really meant "*was* present in the United States." This action flies in the face of congressional intent and seeks to rewrite federal law to suit the LSC's own purposes. The LSC Board of Directors has no authority to change the plain meaning of the federal law. "Is" does *not* mean "was."

No amount of self-serving interpretation by Legal Services activists can change the meaning of the law. Yet it has become apparent that Legal Services lawyers have routinely violated the law based on their own absurd notion that "is" means "was."

The February 17, 1999 article in *The Wall Street Journal* ("Legal Air Lawyers' Kicks Up New Battle With Farmers in North Carolina," by Motoka Rich) illustrates the intrinsic unaccountability of Legal Services lawyers when the law is inconvenient to their agenda:

> "The dispute centers on a regulation of the Legal Services Corporation, which distributes federal funding to local legal-aid groups. The rule says lawyers can assist foreign temporary workers only while they are 'present in the United States.' Legal services attorneys took that to mean they could help workers with issues that occurred while they were in the country. And until Ms. Hall's trip, no one questioned the attorneys' interpretation that they could provide migrants who had returned to Mexico with follow-up counseling for such cases as assuring final payment of wages or medical care for injuries that occurred in the U.S."

A simple procedure exists for Legal Services lawyers who have any doubt as to the meaning of a regulation issued by LSC. They can contact the General Counsel of LSC and request a written opinion as to the meaning of the language in question. Apparently, the last thing any Legal Services lawyers wanted was a written opinion telling them that the legal requirement that an "alien is present in the U.S." to receives assistance means that the alien must be present in the United States to receive legal assistance. The very fact that Legal Services lawyers engaged in illegally representing non-citizens not present in the U.S. did not seek such guidance from the LSC General Counsel speaks for itself.

The LSC, rather than enforce the law as required by the LSC Act, saw fit to appoint the Erlenborn Commission to study the language of an appropriations law it had absolutely no authority to change. The fact that the commission was named in secret, had nothing remotely resembling balance, and met in closed-door sessions to develop its tortuous conclusions for the final report, is all further proof to those of us whose members must deal with this rogue program that we should not expect any fair treatment or good faith actions from the LSC Board.

"GLASSBORO" Theory-based Lawsuits

Legal Services grantees, and/or their mirror corporations, during the past couple of years have filed numerous lawsuits against agricultural and other employers alleging violations of the minimum wage provisions of FLSA based on the *"Glassboro"* theory. The *Glassboro* theory addresses two closely related issues in connection with expenses incurred by workers. The first issue is whether actual deductions for food, transportation, housing, and other expenses can be counted toward the minimum wage. These deductions are called "direct deductions" and are relatively uncontroversial. The second issue is whether costs incurred by the workers themselves in seeking work and coming to the job can or should be counted toward the minimum wage. These so-called deductions are called "de facto deductions" and are highly controversial. *Glassboro* proponents argue that these expenses are for the employer's benefit and therefore cannot be credited against or allowed to reduce the workers' earnings below the minimum wage. They argue that merely arriving at work is a "benefit" to the employer, whether or not the employee performs any work. To the extent that these so-called deductions "reduce" the workers' wages below the minimum wage during the first pay period, proponents of the *Glassboro* theory argue that a violation of the minimum wage law occurs.

Stripped to its core, the *Glassboro* theory is nothing more than a policy judgment of its proponents that all employers ought to pay transportation, subsistence, and immigration-related costs for their workers. The applicable statutory materials and regulations do not compel it; in fact, they contradict *Glassboro*. When, in the early 1990s, the Department of Labor sought actively to enforce *Glassboro* with agricultural employers, its efforts engendered strong political opposition and ultimate defeat. Because of this defeat, *Glassboro* proponents have switched to the courts to achieve their political goal through judicial decree, rather than publicly accountable rulemaking.

Glassboro-based lawsuits have been filed by Florida Rural Legal Services, Michigan Migrant Legal Assistance Project, Farmworker Law Project of the Legal Aid Society of Mid-New York in conjunction with its mirror corporation, Farmworker Legal Services of New York, and by the Florida mirror corporation, the Migrant Farmworker Justice Project. These cases were filed even though the United States Court of Appeals for the Ninth Circuit in *Reich v. Japan Enterprises Corp.* found DOL's

asserted authority in support of Glassboro completely lacking. Although technically not binding on other courts outside the Ninth Circuit, the *Japan Enterprises* decision is well reasoned and should be followed.

In fact, the Florida Federal District Court rejected the Migrant Farmworker Justice Project attorney's arguments in *Alvarado et al., v. R&W Farms and Florida Pacific Farms* that employers of H-2A workers violated FLSA by failing to pay for workers' immigration and transportation costs to the United States based in large part on the *Japan Enterprises* decision. In a case of first impression, the court found that travel costs and recruiter fees paid by H-2A workers to enable themselves to work in the Untied States are not reimbursable expenses that must be paid by the employer prior to the end of the first pay period. The court rejected the *Glassboro* theory and granted summary judgment for the defendant strawberry growers.

Not to be deterred, the Migrant Farmworker Justice Project has appealed this decision to the U.S. Court of Appeals for the Eleventh Circuit *and* has filed three additional lawsuits based on the same arguments against other strawberry and citrus growers. NCAE has submitted an amici curia in support of the defendants in the *Jorge E. Arriaga, et al., v. Florida Pacific Farms*, et al. case.

NCAE firmly opposes the Glassboro theory and the attempts by Legal Services attorneys and their mirror corporations to expand it. We believe that the *Glassboro* theory unfairly shifts costs and expenses to employers and does so in a way that is contrary to any reasonable interpretation of the law. Continued filings of lawsuits based on Glassboro in the face of adverse court rulings only serves to harass agricultural employers and subject them to needless litigation expenses.

CONCLUSION

Based on the LSC's continued reluctance to enforce the restrictions placed on grantees by Congress, and the continued disproportionate litigation filed against H-2A employers to the exclusion of providing legitimate legal counsel to the poor, NCAE asks this Subcommittee to continue its close oversight of LSC and its grantees. The Council also asks the members of this Subcommittee to encourage President Bush to quickly appoint a LSC Board that will enforce Congress' restrictions and implement mandated reforms of the grant process to ensure a system of competition among would be legal services providers.

Thank you, again for the opportunity to submit this statement to the record.

THE GOVERNMENT PROVISION OF LEGAL SERVICES FOR THE POOR: COMPETITION OR MONOPOLY

RONALD J. SUTHERLAND
ADJUNCT PROFESSOR OF LAW
SCHOOL OF LAW
GEORGE MASON UNIVERSITY

DECEMBER 30, 2001

INTRODUCTION

The Federal Government, through the Legal Services Corporation (LSC), awards grants to legal aid organizations to provide legal services to the poor. In 1996, the U.S. Congress required these grants to be awarded on a competitive basis. However, the LSC regulations that determine the grants process, precludes competition with the result that LSC grantees have monopoly franchises in their service territories. State programs, such as IOLTA (interest on lawyers' trust accounts), also provide legal aid to low-income households. State IOLTA programs award grants on a non-competitive bases and thereby reinforce and perpetuate the monopoly franchises established by the LSC. The American Bar Association and several state bars recommend that each lawyer provide pro bono legal services to poor people. Pro bono efforts provide little assistance to poor people, but provide more assistance to the non-poor. The pro bono policy of the Bar supports monopoly elements in the market for legal services.

The 1996 Omnibus Continuing Resolution passed by the U.S. Congress requires the Legal Service Corporation to award grants on a competitive basis.[1] The 1996 Resolution also orders the LSC to end "presumptive refunding", a process by which

[1] U.S. Congress, *Omnibus Continuing Resolution*, H.R.3019: Public L. 104–134, 110 Stat. 1321–50. (4/26/96).

LSC renews grants to existing grantees without allowing alternative providers to compete for awards.

The 1996 Resolution expresses the will of the U.S. Congress that competition would produce an efficient delivery system of legal services to the poor. Congressman Bill McCollum affirms this conviction in commenting on the bill he introduced in 1995 to reauthorize LSC.

> Competition generally produces innovation, efficiency and excellence. It is hard to believe that, if competition involving complex weapons systems—long resisted by the defense industry—has produced the F15, the best fighter in its generation and the Advanced Tactical Fighter—then competition will not produce better delivery systems for legal services to the poor.[2]

The intent of Congress, as stated explicitly in the 1996 Bill, and again by Congressman McCollum, is to require the LSC to award grants to legal services providers on a competitive basis. The clear rationale for requiring a competitive grants process is, as stated by Congressman McCollum, that it will produce innovation, efficiency and excellence. Indeed, the LSC has a statutory requirement of providing ". . . the most economical and effective delivery of legal assistance to persons in both urban and rural areas."[3] A competitive grants process would attract a number of proposals and then award grants to the organizations that promised to provide the most cost-effective legal services to the poor. In this way a competitive process would contribute to economy and efficiency in providing legal services.

The efficiencies inherent in competition motivate much of the deregulation of the U.S. economy. The deregulation in the airlines, long distance telecommunications, trucking, railroad and natural gas industries is producing benefits to consumers, such as price declines from 25% to over 50%.[4] An increasing reliance on competitive market forces is producing economic benefits worldwide. The U.S. Congress could reasonably expect that competition would improve the quantity and quality of providing legal services to the poor.

One purpose of this paper is to assess the grants program of the Legal Services Corporation (LSC) to determine whether it reflects a competitive process required by Congress. To the extent that the LSC grants process is not competitive, this study documents impediments to competition and demonstrates that non-competitive elements are producing inefficiencies in the government-supported market for legal aid. The LSC programs interact with state programs and other legal aid programs to determine a market that provides legal services. A second purpose is to assess efficiency and cost-effectiveness of the market that provides legal services to the poor.

Federal support for legal aid in the United States developed as part of the War on Poverty of the Johnson Administration, from the years 1964 through 1967. Earl Johnson, Jr., who is an important participant in federal programs to support legal aid, documents the history of this development.[5] The Office of Economic Opportunity (OEO) began supporting Community Action Agencies, which are the precursors to LSC grantees of today. Johnson describes and quotes the views of Jean and Edgar Cahn, who expressed reservations about the inefficiency and self-serving nature of these monopoly legal aid organizations. Borrowing Johnson's (1978, p. 33) quote from the Cahns:[6]

> Monopolies are characterized by a tendency to expand, to perpetuate themselves and to operate at less than optimal efficiency. These tendencies do not disappear when the market monopolized is the market for social services or when the product is social change.
>
> In effect, "coordination" and "comprehensiveness" become the trademark of a monopoly created by an association of independent agencies. The result is often better public relations with no compelling necessity for a commensurate improvement in services. . .and risk avoidance is . . . likely to play a particularly important role.

---

[2] Statement from Congressman Bill McCollum on a bill he introduced in 1995 to reauthorize LSC

[3] The Legal Services Corporation Act as Amended 1977, public law 95–222, Dec. 28, 1977, p. 4.

[4] Robert Crandall and Jerry Ellig, *Economic Deregulation and Customer Choice: Lessons for the Electric Industry*, Center for Market Processes, Fairfax, VA, 1997.

[5] Earl Johnson, Jr, *Justice and Reform: The Formative years of the American Legal Services Program*, New Jersey: Transaction Books, 1978.

[6] Edgar Cahn and Jean Cahn, "The War on Poverty: A Civilian Perspective" *Yale Law Journal*, Vol. 73, 1964, pp. 1317.

As summarized by Johnson (1978, p. 33), Cahns' portrayal of these legal aid providers is one of ". . . a monopoly of local services, dedicated primarily to its own survival . . ." In brief, an initial concern in the development of federal support for legal aid was that providers of legal services, financed by government, would be monopolists that served their own interest, more so than served the poor.

This initial concern with monopoly and inefficiency suggests a brief overview of the economic principles of competition verses monopoly. A market is competitive under certain conditions, two of which are: a large number of buyers and sellers of the good or service, and easy entry into and easy exit from the market. (Henderson and Quandt, (1980, p. 136). Such a market imparts the greatest economic benefits to consumers. For instance, if a market has many sellers, buyers can shop around and thereby find the lowest cost seller. Competition encourages sellers to minimize cost. Easy entry prohibits sellers from colluding and raising price, because new firms will enter and offer lower prices. Easy entry also encourages firms to innovate, where successful innovators can enter the market and serve consumers. Easy exit is also important because it enables firms that are inefficient and non-competitive to leave the industry. A basic proposition in economics is that a competitive market produces an efficient allocation of resources.[7] Efficiency means that all goods and services are produced and distributed at minimum cost. Competition is in contrast to a monopoly, which is a single provider of a good or service. Monopolists restrict output, raise the price of their good or service, and contribute to wasting resources. A single seller has limited incentive to innovate and to reduce costs.

Two sources of monopoly may affect the market for legal services, particularly the supply of legal services for the poor. First, the so-called legal-monopoly results from enforcing the restrictions on the unauthorized practice of law (UPL) that limit the practice of law to Bar certified lawyers. Second, the monopoly feared by the Cahn's, which is government supported legal aid providers that are themselves, monopolists. Either or both of these monopolies could restrict the supply of legal services, increase costs, and produce inefficiency. In addition, the two monopolies could cooperate and work synergistically to produce inefficiencies greater than could be produced by either monopolist. This paper considers the importance of the legal monopoly, the monopoly for legal services and the synergistic effects of these two monopolists.

Section 2, Background, discusses three major findings from the literature. First, poor people have significant legal needs that at present are mostly unmet. Second, the legal needs of moderate-income households are much like those of low-income households. Third, many of these unmet legal needs do not necessarily require the services of a lawyer. Section 3 documents the LSC response to the Congressional mandate to introduce competition in awarding grants. Competition in the grants process did not materialize because the regulations that implement the Congressional mandate preclude competition.

The LSC budget for 1999 was $307.6 million (LSC, 2000b, p. 9). However, states also provide financial support for legal aid. A major source of state funding is the interest on lawyers trust accounts (IOLTA), which was $144 million in 1998.[8] Section 4 describes the allocation of grants by the state IOLTA organizations and determines that many of these grants are awarded to LSC grantees using the same formula as LSC.

Pro bono refers to the provision of legal services by lawyers for free or at substantially reduced fee. Section 5 assesses the influence of the Bar on the provision of legal services. The self-interest of the Bar is to protect and defend the legal monopoly, which restricts the use of low cost legal services by poor people. Pro bono services by lawyers provide a small amount of legal services to the poor, but more legal services to the non-poor.

The LSC, IOLTA organizations and the Bar support a legal monopoly and a monopolistic market for legal aid grants. Section 6 presents a modest proposal to achieve some competition and increased efficiency in the use of legal aid resources. First, a simple unbundling of the services of the staffed offices into services provided by a telephone hotline and existing services should reduce costs substantially. Second, revising the LSC regulations to allow free entry into the bidding process for LSC awards—as Congress required—would further improve efficiency.

---

[7] The principle of Pareto optimality asserts that perfect competition provides the most efficient allocation of resources. See microeconomics textbooks, or, Robin Broadway and David Wildasin, *Public Sector Economics*, Second Edition, Boston, Little, Brown and Company, 1984.

[8] American Bar Association, *IOLTA Handbook*, Commission on Lawyers' Trust Accounts, August, 1998, p.93.

2. BACKGROUND: LEGAL NEEDS OF THE POOR AND THE NON-POOR

Surveys of the legal needs of households conclude consistently that low-income households have serious legal needs, many of which are not currently being met. These surveys also determine that the legal needs of moderate-income people are much like those of low-income people. An examination of the survey data questions whether unmet legal needs should be addressed by lawyers or by lower cost legal assistance. The data indicate that most prevalent legal need currently unmet is for advice, counsel and brief service, rather than for court litigation.

2.1 Low-Income Households

Legal aid recipients must establish eligibility to receive legal aid. The LSC defines a maximum income level for eligibility of legal aid to be 125 percent of the current official Federal Poverty Income Guidelines.[9] The LSC *Regulations* define the annual income ceilings by family size and other variables. For instance, the LSC poverty guideline in 1999 for a family of size 5 was $24,000; but it was only $10,300 for a family of size 1. The *Regulations* require that income figures be adjusted for cost-of-living in the locality, medical expenses, debts, and the amount of liquid and non-liquid assets. These adjustments provide a more accurate measure of ability to pay for services than current annual cash receipts.

Government income statistics indicate that poverty is temporary for a substantial segment of the poverty population. According to the *Statistical Abstract of the United States*, during the 1993–94 period, 15.4 percent of the persons in the U.S. were officially poor in an average month. However, only 5.3 percent of the persons were poor in all 24 months of 1993–1994. The average duration of poverty was 4.5 months.[10] These data indicate that many people become poor during some period, but remain poor only temporarily. In addition to the transitory poor, there is likely to be a significant share of the population, i.e., 5.3 percent, where poverty is long-lived.

Annual income, even with the LSC adjustment, is not a reliable measure of economic well-being. Some low-income people are in their early income earning years and have much higher lifetime expected earnings. Other low-income people are senior citizens with a moderate level of wealth acquired over their income earning years. Senior citizens who have left the labor force often have low annual income levels. Some people who become unemployed enter the poverty class, but then leave when they again become employed. The people at each end of their income earning years may be officially poor, but may not be economically desperate. Those who are temporarily unemployed may have higher expected future income. The transitory nature of many low-income persons indicates that many low-income households may have long-term incomes quite similar to moderate-income households.

2.2. Annual Income and the ABA Survey of Legal Needs

The American Bar Association sponsored a survey of more than 3,000 low-income and moderate-income households that estimates their legal needs and how these households meet their needs (ABA, 1994, p. 8). The survey indicates that 40 percent of low-income households have some legal need, whereas 46 percent of moderate-income households report having at least one legal need during the year. According to the ABA study (ABA, 1994, p. 9), the mean number of legal needs per household per year is 0.8 for low-income households and 0.9 for moderate-income households. On average, households experience slightly less than one legal issue per year.[11]

The ABA survey presents data on the frequency of legal needs by type of need. Table 1 shows the frequency of needs for both low- and moderate-income households. Overall, there is broad similarity in the type of legal issues that low- and moderate-income households experience. However there are differences. The housing issues of low-income households relate more to landlord-tenant disputes, while moderate-income households have more real estate and property issues. The legal needs of the poor are quite similar to those of moderate-income households, at both the aggregate level and by type of legal issue.

---

[9] Legal Service Corporation, *Regulations of the Legal Services Corporation*, Washington DC, January, 2000, p. 43, Part 1611—Eligibility of the Code of Federal Regulations, Title, 45, Section 1600.

[10] U.S. Department of Commerce, *Statistical Abstract of the United States: The National Data Book*, U.S. Bureau of Census, Washington DC, 1999, p. 486.

[11] The ABA survey indicates that low-income households experience 2.1 legal needs, while moderate-income households experience 1.9 legal needs, but these estimates reflect issues that arose in a previous year and are not resolved.

Table 1
Percent Distribution of Households With Legal Needs
By Type of Need

Type of Need	Low-Income	Moderate-income
Housing/Real property	13	10
Personal Finance/Consumer	13	13
Community	7	8
Family & Domestic	8	6
Employment	7	10
Personal/Economic Injury	6	9
Health Care	5	4
Wills/Estates	4	10

Source: ABA (1994, p. 9)

LSC (2000b, p.7) data show that the types of cases closed by LSC grantees correspond imperfectly to the specific legal issues that households experience. The largest share of cases closed by LSC grantees (36%) relate to family issues, however only 8% of the households experience family issues. LSC grantees do a large percent of their cases in housing (23%) and personal finance (26%), which LSC considers as consumer and income maintenance. This allocation corresponds reasonably well with the frequency of legal issues that households experience. LSC does not specifically identify cases for wills/estates, community issues and personal/economic injury, which, in sum, are experienced by 17% of the low-income households.

In the ABA survey, low-income households are defined as having a household income not exceeding 125 percent of the poverty level. The ABA used this income level, which is consistent with the LSC requirement, to include households eligible for subsidized legal assistance. Moderate-income households have an annual income from the poverty guideline up to $60,000 per year. Income is defined as annual personal income.

The survey data provides two explanations for observing that low-income and moderate-income households have similar legal needs. First, low-income is in part transitory and these households subsequently achieve moderate-income levels. Second, the low-income households, who most frequently experience legal issues, are at the upper end of official poverty and have income close to the moderate level.

2.3. How the Poor Meet Their Legal Needs

The ABA survey data indicates how households meet their needs. As seen from Table 2, low-income households use the legal/judicial system to meet their legal needs in only 29 percent of their cases. This result supports the conventional view that the legal needs of the poor are largely unmet. Moderate-income households use the legal/judicial system to meet their legal needs in only 39 percent of their cases.

Table 2
Percent Distribution of Legal needs by All Actions Taken

	Needs of Low-Income Households (n = 1757)	Needs of Moderate-Income Households (n = 1272)
Legal/Judicial Action	29%	39%
Non-Legal/Judicial, Third Party	13	22
"O n Own" Efforts	41	42
Did Nothing At All	38	26

Source; American Bar Association, *Findings of the Comprehensive Legal Needs Study*, Chicago, Illinois, American Bar Association, ISBN 0-89707-968-X. 1994, p. 22.

These survey results indicate that low-income households meet a small share of their legal needs with the legal/judicial system. Low-income households frequently "did nothing at all" to solve their legal problems. One interpretation is that the legal needs of the poor are largely unmet because the poor are income constrained and they have limited information about legal/judicial options. An alternative explanation of the apparent low use of legal/judicial action is that households do not believe that professional legal services are worth the cost and find better value in solving their own problems.

Table 3 presents the percent distribution of the three most common reasons for taking no direct action to resolve a legal need. Looking behind these data, low-income households expect that nothing could be done in 28 percent of the cases; whereas moderate-income households thought that nothing could be done in 17 percent of the cases. Moderate-income households turned to someone else for advice or assistance more often than low-income households (33 percent to 21 percent).

Table 3
Three Most Common Reasons for Taking No Direct Action to Resolve a Legal Need, Percent Distribution

Reason	Low-Income Needs	Moderate-Income Needs
Thought nothing could be done	28%	17%
Turned to someone else to handle	21	33
Not a problem – just the way things are	12	19

The survey question of not taking direct actions was revised to ask why the household did not seek legal/judicial help. For low-income households, the most likely response was "didn't think it would help" (20 percent), followed by cost concerns (16 percent). Lack of income and the high cost of lawyers are two reasons why the poor do not retain lawyers, but not the only reasons.

The ABA data indicate that low-income households seldom use the legal/judicial system. However, when they seek legal assistance, they seek a lawyer in private practice in 3 out of 4 cases and seek a legal services provider in only 1 out of 4 cases. (ABA, 1994 p. 53). This result may appear surprising considering that lawyers charge a fee, whereas legal service organizations often offer free services. Low-income households appear to have much better information about the availability of lawyers, than about the availability of nonprofit legal service providers. Those using private lawyers found them through friends, relatives or other acquaintances, whereas those using legal services tend to locate them through the yellow pages. The ABA study shows that 50 percent of the low income households are aware of free legal services and only 36 percent of these households believe they are eligible

for free services. These results raise the question whether government funded legal service providers spend sufficient resources informing their potential clients of the availability of legal services.

A household survey of Virginia residents by the Survey Research Laboratory provides evidence on the importance of income in the decision to hire a lawyer to address legal needs. This survey confirms that the legal needs of indigent persons go largely unmet. The survey defines indigent to correspond with the LSC definition, which includes persons with income at or below 125 percent of the poverty level. The survey found that 85 percent of the households with a legal problem lacked a lawyer at least once. Surprisingly though, the respondents lacked a lawyer in only 10 percent of the situations where an effort was made to obtain a lawyer. The survey (Survey Research Laboratory, 1991, p. 6) asked the following question "Was a lawyer needed but not retained?" Ninety one percent of the low-income respondents reported "no" and 94 percent of the respondents with income above 125% of the poverty level reported "no". Although people with low and moderate income report legal problems, and not hiring a lawyer, they also report not looking for a lawyer or needing a lawyer to solve their problems.

The Virginia study shows that some people with an income below and above 125% of the poverty level hire lawyers to address their legal needs. Those who do not hire a lawyer do not search for a lawyer and report having no need for a lawyer. These results refute the common view that people are unable to hire lawyers because of low income. The results suggest that people hire a lawyer when it makes financial sense and do not hire a lawyer when it does not make financial sense.

Further, low-income and moderate-income people involve a court or hearing body for 12% and 16% of their legal needs respectively. There are many differences between low and moderate-income households in their legal needs, and how they respond to these needs, other than income. However, if we risk an interpretation based on income, the result is that low income reduces the use of the legal/judicial system by 10% (39%–29%) and reduces the percent of legal needs resolved in a court or hearing body by only 4% (16%–12%). Lack of income by itself does not appear to be a critical variable in the limited use of lawyers by poor people.

The ABA survey findings on legal needs are confirmed by numerous other studies and have a broad measure of acceptance. Albert Cantril (1996) of the ABA summarizes the main findings of the 1994 ABA study. Cantril presents five conclusions, three of which are quoted here: (1) The kinds of legal problems reported by low- and moderate-income households are more alike than different, (2) . . . the private bar and publicly-funded legal services programs now serve only a small portion of the legal needs reported by low-income persons, and (3) most people facing situations that have a legal dimension do not turn to the justice system for help.

Based on these findings, Cantril presents eleven steps for "An Agenda for Access". The first two steps he proposes are quoted here:

1. Increase the flexibility of the civil justice system, thereby expanding the options available to people seeking help with a legal problem.
2. Develop better ways for people to obtain information about their options when facing a legal situation.

Cantril's summary of the ABA survey and the above two proposals in his policy agenda accurately capture a very large literature on providing legal services to the poor.

The ABA survey indicates first that low- and moderate-income households experience similar legal issues and second that these needs are mostly unmet by the legal system. The data indicate that the most needed legal assistance is in the form of advice, counsel, brief service, rather than litigation in a court. This finding supports Cantril's recommendations for a more flexible civil justice system, and one that provides better ways for people to obtain information about their options.

3. THE LEGAL SERVICES CORPORATION (LSC)

The Legal Services Corporation (LSC) is a private, nonprofit corporation, established by the U.S. Congress and funded by the Federal Government. The purpose of the LSC is to provide ". . . financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance."[12] The LSC receives annual federal appropriations that it allocates to non-profit legal service providers located throughout the country.

[12] The Legal Services Corporation Act as Amended 1977, Public Law, 95–222, Dec. 28, 1977, p. 2.

3.1 Congress Requires the LSC to Use Competition to Award Grants

The *Legal Services Corporation Act as Amended 1977* requires the Corporation to (p. 8): "(3) ensure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas". Subsequently, Congress required the LSC to use a competitive process in allocating LSC grants. The 1996 Omnibus Continuing Resolution, states: ". . . the Legal Service Corporation shall implement a system of competitive awards and contracts for all basic field programs . . ."(p. 30). In the 1996 Resolution, Congress went even further:

> (b) Not later than 60 days after the date of enactment of this Act, the Legal Services Corporation shall promulgate regulations to implement a competitive selection process for the recipients of such grants and contracts.

These separate points bear repeating. Congress first required the LSC to implement a competitive process in allocating grants, and second, Congress required the LSC to promulgate regulations to achieve a competitive selection process.

Congress observed that historically the LSC simply renewed the grants of existing grantees, instead of allowing new potential providers of legal services to compete for funding. In its 1996 Resolution, Congress explicitly required an end to this presumptive refunding:

> (e) No person or entity that was previously awarded a grant or contract by the Legal Services Corporation for the provision of legal assistance may be given any preference in the competitive selection process.

This Congressional requirement for ending presumptive refunding further elucidates Congress' intention of requiring competition for LSC grants.

3.2 LSC Responds to Congress' Requirement of Competition

The LSC responded to the Congressional requirement to promulgate regulations to implement a competitive selection process through its *Regulations or the Legal Services Corporation (hereafter LSC Regulations).* Part 1634 of the LSC Regulations "Competitive Bidding For Grants and Contracts" (pp. 113–117) defines the LSC response to Congress that establishes a competition for grants. In Part 1634, the LSC first states its commitment to ". . . a competitive system to award grants. . . " (p. 113). LSC states further that the purpose of competition is to encourage effective delivery of high quality legal services.

The *LSC Regulations* define the conditions that determine whether effective competition will develop in the selection of grants. The following regulations define the market for grants:

(1) The Regulations note that LSC defines the "service area" to be served by grantees.

(2) The LSC ". . . shall award no more than one grant or contract to provide legal assistance to eligible clients . . . within a service area."

(3) LSC determines that it is necessary to award no more than one grant to ensure that all clients have access to "a full range of high quality legal services . . ."

These LSC regulations influence the competitive process, but the selection criteria for awards further defines this process. Paraphrasing the *Regulations*, these criteria emphasize:

(1) that an applicant have a full understanding of the basic legal needs of the eligible clients in the area to be served, and

(2) The quality, feasibility and cost-effectiveness of an applicant's delivery approach as evidenced by the applicant's experience in the delivery in the type of legal assistance being contemplated.

(3) Evidence of an applicant's capacity to comply may include the applicant's compliance experience with the LSC.

(4) The applicant's ability to assure the availability of a full range of legal assistance.

These *Regulations* preclude the possibility of LSC grants being awarded with effective competition, and instead ensure that the LSC funds monopolists who provide the legal services. As noted above, a competitive market has free entry by a large number of potential service providers. In contrast, the LSC Regulations impose barriers to entry that restrict competition and establish monopolist service providers. These monopolists are government supported franchise monopolists.

The steps in creating these franchise monopolists are apparent from the LSC regulations. The LSC defines a service area and requires that only one provider will serve an entire area. That provider will have a franchise monopoly within a service area. However, competition could determine the single provider.

The absence of competition comes from barriers to entry. One barrier is the requirement of serving an entire service area, because many potential bidders serve smaller areas. A second barrier to entry is the requirement of being a full service provider. Many organizations provide legal aid, but provide only specialty services for the disadvantaged. There is likely to be only one grantee in a service area that is a full service provider, and that grantee is the existing LSC grantee. The most critical barrier to entry is the requirement that the legal service provider be selected on the basis of experience in a service area. The only grantee with demonstrated experience in a service area is the existing grantee, which has a franchise monopoly resulting from receiving the previous award.

The LSC responded to the Congressional order to establish a competitive market for awards by promulgating regulations that provide barriers to entry in a competitive process. These barriers to entry ensure that monopolists continue to provide legal services in a franchise service area. Further, these franchise monopolists are the only feasible bidder for subsequent awards—thus ensuring presumptive refunding.

The LSC now has six years experience with a competitive grants process. From 1976 through 1995 LSC grantees simply submitted a refunding application, and continued funding was expected and generally realized. The LSC publishes annually a *Request for Proposals* that lists the service areas competed in fiscal year. The LSC publishes annually in the *Federal Register*, the results of the competition by service area, applicant name and anticipated award. These data are a published record of the number of bidders (by name) for each service area, by year of competition.

Table 4
Number of Service Areas and Number of Applicants For LSC Grants By Year, 1996 –2001

Year	Number of Service Areas Competed	Number of Applicants
2001	143	145
2000	167	172
1999	136	137
1998	133	133
1997	353	353
1996	361	362

Source: Legal Service Corporation, *Request For Proposals,* Appendix A Service Areas, Annual Editions. And, Legal Services Corporation, "Announcem ent of Intention to Make FY 2000 Competitive Grand Awards" *Federal Register*, Vol. 64, No. 188, September 29, 1999, pp. 52551-52556. Announcements for previous years also announced in Federal Register.

Table 4 shows the total number of service areas competed each year beginning in 1996 and the total number of bidders. With minor exception, each service award is based on exactly one bid. Hence the total number of bids equals, or slightly exceeds, the number of service areas competed. This result confirms the analytical result that LSC *Regulations* preclude effective competition for grants, and hence for legal services.

LSC grantees have a self-interest in renewed funding without competition. Fried (1997) describes the case of a the private law firm of Dessen, Mosses & Sheinoff that was awarded a LSC contract in 1996 to serve Montgomery and Delaware counties in Pennsylvania. The losing incumbent legal aid providers obtained congressional support from their local representative. In addition, union legal aid workers from several areas picketed the law firm. The law firm withdrew its bid, and the LSC re-awarded the grants.

4. State Legal Aid for the Poor

4.1 Description of IOLTA Programs

State legal aid organizations receive funding from state general revenues, from court filing fees, and from interest on lawyer trust accounts (IOLTA). Only a handful of states provide revenues from the general fund and from court filing fees, but all 50 states support legal aid with IOLTA accounts. This section considers state IOLTA programs and focuses on the competitive nature of the IOLTA grants process.

IOLTA programs are funded primarily by the interest that is paid by banks on accounts that contain funds held in trust for clients by their lawyers. In the course of representing clients, private attorneys and law firms routinely receive money held in trust for future use. A common example is the money held on deposit pursuant to the sale of real estate. The IOLTA program, itself a nonprofit entity, collects the interest payments as revenues and uses these funds to support legal aid services. The IOLTA accounts generated $144 million in 1998. The total budget for IOLTA programs was $172 million, which includes the IOLTA revenues, investment income filing fees and other income.[13]

The formal objectives of the IOLTA programs are reasonably consistent among the various states, but the language varies. A major objective of the programs is to provide financial support to organizations that provide "legal services to the poor". The term "legal service to the poor" is typically understood to encompass a full range of civil legal issues affecting poor people. The legal issues include consumer finance, education, employment, family, juvenile, health, housing, income maintenance, and individual rights issues, among others. A full-service provider will provide all of these services. Legal services are restricted to civil cases and exclude criminal cases.

IOLTA programs have a second category of funding, sometimes termed "discretionary" that supports programs, such as "disadvantaged" groups. A specialty service provider that serves a disadvantaged group will typically specialize in providing one type of legal service. The most common special need appears to be family issues, such as battering and abuse and domestic assault. The term "legal services" applies to the poor and the disadvantaged; but the term "legal services to the poor" is more restrictive and excludes the disadvantaged, unless they are legally poor.

In most states, the IOLTA annual budget is allocated to legal services to the poor and to "discretionary" areas. The discretionary allocation supports legal service providers who meet special needs. The discretionary allocation also meets the other objectives of the IOLTA organization, such as providing law school scholarships. These legal services providers do not receive LSC grants.

A large share of IOLTA revenues apparently supports the same grantees that the LSC supports. However, estimates of the share of IOLTA revenues supporting LSC grantees are inconsistent. Data obtained from IOLTA directors indicate a median share of IOLTA funding that supports LSC grantees to be in the 60 to 70 percent range. The National Association of IOLTA programs states that historically about 80 percent of IOLTA funds are used to provide legal services to the poor.[14] Other data indicates that the large majority of IOLTA funds are earmarked for legal services to the poor, and most of these funds go to LSC grantees.

4.2 Meaningful Competition Does Not Exist

Competition is limited to only a few states, and then only to small grants to serve the disadvantaged. The data reflect that an IOLTA grant to provide legal service for the poor of, say $100,000 will have exactly one bidder, while a grant to provide legal services for the disadvantaged of, say $10,000, will have at least a few bidders, often including the grantee who receives the single larger grant. There is no meaningful competition for IOLTA grants to provide legal services for the poor.

A large share of the IOLTA revenue supports LSC grantees that are full service providers of legal services for the poor over a large service area. Each of these conditions—full service provider and large service area—is an effective barrier to entry, as well as barriers to exit. The current grantees maintain a franchise monopoly within their service area because there are no alternative providers of "legal services to the poor" and no legal service providers for the entire service area. There is no incentive to compete on the basis of lower costs, or, on the basis of higher productivity. If there were alternative providers, the barriers to entry would preclude them from competing.

---

[13] American Bar Association, *IOLTA Handbook*, Commission of Interest on Lawyers' Trust Accounts, August, 1999, p. 93.

[14] See the NAIP brochure, *The National Association of IOLTA Programs*, Chicago, IL.

The economic benefits of competition are obvious to Congress and to economic policy makers around the world. However, many participants in the legal services community reject the competitive model. The directors of IOLTA programs view competition as inappropriate for providing legal services to the poor. The rejection of the competitive model by IOLTA directors is a sufficient barrier to entry that precludes competition for IOLTA grants. IOLTA directors reinforce the monopoly by supporting the continued funding of existing grantees. Presumptive refunding is expected from the IOLTA grantees that provide legal services to the poor.

IOLTA directors explicitly oppose competition for awards. However, the LSC, following Congressional mandates, favors a competitive grants process and claims to implement such a process. The LSC and the IOLTA programs award grants to provide "legal services for the poor" and allocate these awards on the basis of a poverty population formula. The LSC and the IOLTA programs fund the same grantees with the same allocation procedure, although one organization opposes competition and the other organization claims to use competition.

The LSC defines the service areas, provides funding for "legal services for the poor" ensures that a single provider serves an entire service area and is a full service provider. These conditions establish a monopoly franchise for service providers and preclude competition for future awards. The significance of the IOLTA programs is to reinforce and perpetuate these monopoly franchises and to preclude competition. LSC and IOLTA combine to provide the bulk of the financial resources to provide legal aid. Potential competitors to IOLTA-LSC grantees have limited access to alternative funds and almost no access to IOLTA of LSC funds.

5. The Influence of the Bar on the Provision of Legal Services

The American Bar Association and the state bars (hereafter the Bar) affect the provision of legal services to the poor, and to the non-poor. This section discusses three efforts by the Bar to affect legal services: the legal monopoly, the Bar policy of pro bono, and the influence of the Bar on IOLTA and on LSC. The legal monopoly, by intention and by effect, reduces the supply of legal services and increases the cost to the poor and to the non-poor. The Bar encourages lawyers to provide pro bono legal services for the poor. These efforts by the Bar encourage a modest amount of legal assistance for the poor; most pro bono assists the non-poor. Bar pro bono policy supports the legal monopoly. The Bar strongly supports LSC and IOLTA programs that fund monopolistic legal service providers. The LSC and IOLTA programs also support the legal monopoly.

5.1 The Legal Monopoly

The legal monopoly refers to the monopoly that lawyers have in the practice of law. The legal monopoly is often described in the law review literature as the exclusive access that lawyers have to the courts. Only Bar certified lawyers may represent a client in a court of law. However, the legal monopoly must be construed more broadly to include other areas of the practice of law. The practice of law includes providing legal advice and counsel and completing legal forms with expertise. The American Bar Association and state bars (the Bar) have promoted state legislative efforts to prohibit the unauthorized practice of law (UPL). The UPL restrictions are in force in each state in the U.S., except Arizona, where they have been abolished.

The UPL restrictions limit the use of non-lawyer legal services by both the poor and the non-poor. The UPL restrictions reduce the use and accessibility of low cost legal information and advice and also restrict access to legal forms and expertise to complete these forms. However, a rapid growth in various self-help tools is challenging the UPL restrictions in many areas.

An objective of the UPL restrictions is to encourage the use of lawyers instead on non-lawyer legal services. Americans for Legal Reform (known as HALT) estimates the "excessive" legal bills resulting from the UPL restrictions are about $3.3 billion per year for wills, divorces, and bankruptcies. The HALT estimation is shown in Table 6 as the sum of the potential savings in legal costs from using non-lawyers to do wills, divorce and bankruptcy. These excessive legal bills are termed "monopoly profits" by economists, because they are the profits resulting from barriers to competition.

Table 6
Estimation of Excessive Legal Expenses by Americans for Legal Reform
(in millions of dollars)

Legal Matter	Cost of Lawyers	Cost of Paralegals	Potential Savings
Wills	$821	$176	$645
Divorce	$1,150	$307	$843
Bankruptcy	$2,025	$225	$1,800
Total	$3,996	$708	$3,288

Source; HALT (Americans for Legal Reform), quoted in USA Today, February 19, 1999.

The restrictions on the UPL discourage clients from obtaining legal services provided by someone other than a licensed lawyer. The UPL restrictions also discourage court clerks from providing useful assistance. As explained by Engler (1999): "The rules primarily prohibit clerks, mediators and other court players from giving legal advice to unrepresented litigants." Clerks cannot advise the client on the merits of the case or on how to proceed. Clerks provide legal forms, but not legal expertise on completing the forms. The pro se litigant, says Engler (1999): ". . . is forced to make choices at every turn without either understanding the range of options available or the pros and cons of each option." The UPL restrictions preclude court employees from providing any advice or council, other than to hire a licensed lawyer. Indeed, UPL restrictions increase the costs of the legal system and encourage persons to take no legal action, or, to hire an attorney.

Now consider such a person who enters the Superior Court of Arizona, in Maricopa County. This Court has developed a Self-Service Center to help people help themselves. The Center provides general information about cases, court forms and instructions, and provides lists of mediators and lawyers who can provide expert advice. The Self-Service Center also has a 24-hour information telephone system with detailed information on numerous types of issues. The Maricopa court has pioneered the use of kiosks, which are stand-alone computer based systems that produce legal information and legal forms. The forms include no-fault divorce documents, child support petitions, domestic violence petitions and documents for landlord tenant actions. According to Granat (2000) the kiosks are so popular that the number is being increased from 4 to 150 throughout the country. A difference between most courts in the country and the Maricopa court, is that the UPL restrictions are abolished in Arizona.

The phrase "legal monopoly" is commonly used in the law literature to characterize the practice of law, and especially access to the court system. The legal monopoly refers to the legal profession has whole, not to individual lawyers. Posner considers the legal profession as individual licensed lawyers that form a cartel. Most cartels function by members agreeing to restrict output, restrict entry or increase price. However, the large number of private lawyers precludes successful collusion. As explained by Posner (1995, p. 51–52), when the private cartel cannot be enforced, government assistance is required:

> Government on the other hand, through a requirement that providers of a specialized service have a license, can limit entry rather easily. So we should expect to find that durable, effective professional cartels are government supported.

The government supports the legal monopoly via state statutes that restrict the UPL.

HALT, a public interest organization dedicated to legal reform presents several examples of the legal profession prosecuting the unauthorized practice of law:

- Texas—Publishers of self-help law books and software were targeted in proceedings by the state supreme court alleging the publishing legal information constitutes the practice of law.
- California—A San Bernardino lawyer filed suit against forty independent paralegals charging them with unauthorized practice of law, false advertising and unfair competition.

- Delaware—Volunteers providing assistance to parents representing their disabled children in due process hearings regarding special education services were charged with the unauthorized practice of law.
- Florida—The state supreme court ruled that the use of the phrase "free consultation" in advertisements constitutes the practice of law. A company that helps legal consumers complete paperwork for simple divorces and bankruptcies was barred from using this phrase.
- Oregon—A paralegal who provided services to over 10,000 low-income customers between 1987 and 1995 without a single complaint from any of them was shut down because the court found that her services constituted unauthorized practice of law.
- Nevada—The state has now adopted a law that will impose criminal penalties on non-lawyers engaged in the unauthorized practice of law.

These examples are some of many where enforcing the unauthorized practice of law increases costs and reduce the supply of legal services to the poor and to others. The critical aspect of pro se is obtaining some type of self-help legal assistance. The restrictions that limit this self-help may be the most serious impediment to access to cost-effective legal services by both low and moderate-income people.

5.2 The Bar and Pro Bono for the Poor

The ABA recommends that attorneys provide at least 50 hours of *pro bono* legal service per year, to poor persons or to organizations serving poor persons (ABA, 1999, p. 477). The ABA Model Rule states further (p. 477): "Every lawyer . . . has a responsibility to provide legal services to those unable to pay." This Rule emphasizes providing legal services to the poor, rather than to public service organizations. Further evidence of the ABA position that pro bono should serve the poor is contained in the goals of the ABA Center for Pro Bono, and listed on their web site. The goals do not include providing pro bono assistance to public service organizations or charities; instead the goals include only "providing high quality legal services to the poor."

Eldred and Schoenherr (1993/94, p. 367) review studies of pro bono and conclude "very few lawyers engage in pro bono practice for the poor." These authors state that as few as 15 to 20 percent of the practicing attorneys may provide pro bono to the poor, and that the actual number may be no more than 10 percent. According to Rhode (1998) the best evidence from the profession as a whole is that lawyers provide less than one-half hour per week of assistance to the poor. Christensen (1980) states that lawyers "target their pro bono efforts at friends, relatives, and matters designed to attract or accommodate paying clients." Pro bono efforts "have barely made a dent in the hugely unmet need for legal representation among the poor" (Barry, 1999, p. 1879). Those clients who receive pro bono services are more likely moderate-income than low-income, are more likely to be friends and family than strangers, and are more likely public service organizations than individuals.

The pro bono policy of the Bar appears largely unsuccessful in assisting the poor, but is more successful in advancing the self-interest of the Bar. Judge Richard Posner explains why the Bar policy of pro bono benefits lawyers. Posner (1995, p. 61) states: "The 'ethical' obligation of lawyers to devote a certain amount of time to 'pro bono' (no fee) work . . . limits the supply of legal services to the market while jacking up demand." The supply of market-priced legal services is reduced by each billable hour that is reallocated to free service. This reduction in supply increases the price of lawyer services, thus benefiting the income of all lawyers. Also, the demand for legal services provided by the market increases because pro bono hours given to one client often result in paid hours to another attorney. Lardent (2000) notes that when one party to a legal dispute obtains the services of a lawyer pro bono, the other party is well-advised to hire a lawyer because of the technical, adversarial legal process.

Bar policy to provide legal services to the poor at reduced or no fee is consistent with its efforts to maintain the monopoly position of the legal profession that levies higher fees. Rhode (1996) notes "Americans spend about two billion dollars annually on routine legal problems that non-lawyer specialists and self-help technology can often resolve." It is in the self-interest of the Bar to help lawyers capture as much of the legal services market as possible. Protecting and preserving the legal monopoly in the practice of law is a key strategy.

The legal monopoly is widely accepted in the literature, but Bar officials seldom admit that a purpose of the UPL restrictions is to promote the self-interest of lawyers. Ibelle quotes Thomas Curtin, former President of the New Jersey Bar:

> I have no difficulty saying my position is protecting the interests of lawyers. Why is the ABA, an organization that is supposed to be working for lawyers, trying to find work for nonlawyers? That is not the business of the ABA. This is the American Bar Association, not the American Paralegal Association. (Ibelle, 1995)

This statement by a Bar president confirms that restricting the supply of legal services to those provided by licensed lawyers is in the self-interest of the Bar. Further, by encouraging lawyers to provide pro bono legal services, the Bar is ensuring that the law will be practiced by licensed lawyers and not by paralegals or others. Alterowitz (1997) in discussing pro bono for the poor asserts first the responsibility case and then states "In addition, the failure of attorneys to provide such services is an open invitation to nonlawyers to become involved in unauthorized practice." Encouraging pro bono legal services for the poor is clearly in the self-interest of the Bar and the legal profession.

The self-interest of the Bar, as stated by Curtin (1995), is to encourage the use of lawyers and to protect their income. By encouraging lawyers to provide pro bono legal services to the poor, the Bar is discouraging the use of low cost substitutes and contributing to preserving the legal monopoly. Efforts to reduce legal costs include the greater use of paralegals, self-help technologies such as the Internet and kiosks, telephone hotlines, pro se workshops, and so forth. To the extent that such efforts are successful in reducing costs and expanding service, they also reduce lawyers' income. The self-interest of the Bar is to restrict competition by ensuring legal services are provided by licensed lawyers and by not encouraging free services to those who are able to pay. The challenge to the Bar is to provide legal services to the poor, while not compromising monopoly priced legal fees.

The Bar benefits from legal aid policies that segregate recipients from paying clients. This segregation facilitates price discrimination between clients who pay legal fees and those who do not. Segregating recipients is crucial to Bar policy of protecting lawyer income. If low cost legal services spilled over to moderate-income households, lawyers would be unable to charge normal fees to some people, while others obtained comparable service at substantially reduced rates. Bar legal aid policy focuses on the poor, because providing free service to this group does not jeopardizing legal fees to paying clients.

Even the term "legal services for the poor" refers to a defined group of people. LSC, IOLTA and the Bar emphasize providing legal services to the poor. However, those in need of legal services and unable to pay do not correspond to the official definition of 125 percent of the poverty level. As noted above, many of the officially poor with legal needs are near the upper end of the poverty limit, and become officially poor only a few months in a given year. Further, the legal needs of the poor are much like those of moderate-income levels. Certainly many of the disadvantaged (those with special needs), such as those experiencing family abuse, have legal needs and insufficient resources, and yet are not officially poor. The policy of providing "legal services to the poor" is not justified by need or lack of ability to pay. Instead, providing legal to this group does compete with providing legal services for fee.

The low cost legal services discouraged by the UPL restrictions are those that benefit many people, not just the poor. The cases listed above by Halt include self-help books and the use of paralegals to provide such services as uncontested divorce. These legal services benefit the poor and the non-poor. When the benefits of a legal aid program spill over to the non-poor, the price of the legal service will tend to affect the price of similar legal services provided by lawyers.

5.3 The Bar Interactions with LSC and with IOLTA Organizations

The cost-effectiveness of legal services to those in need is reduced by two monopolistic markets: one is the legal monopoly supported by the Bar, and the other is the monopoly for legal aid grants supported by the LSC and by the IOLTA organizations. These two monopolies are mutually reinforcing, with the combined effects exceeding the sum of the individual effects.

As described by Earl Johnson, the Bar was initially hostile or apathetic towards the establishment of legal aid organizations. What eventually sold the Bar on legal aid societies is that assisting the poor is in the self-interest of the legal profession. As summarized by Johnson (1978, p. 9):

> A legal aid office will keep undesirable nonpaying clients out of the practitioner's office; a legal aid society will secure back wages for a discharged employee or support funds for a deserted wife, thus keeping people of the relief rolls; a legal aid society will educate people who have not used a lawyer before about the value and necessity of lawyers which will increase the business of private attorneys; a legal aid office offers the opportunity for younger members of

> the profession to gain valuable experience; and a legal aid society builds the public relations image of the bar with the general public.

The Bar has actively supported the LSC since the LSC was founded in 1974. This support includes lobbying Congress for increases in the LSC budget. In turn, the LSC budgets provide income to lawyers. In 1998, 3,590 lawyers were employed by LSC grantees (LSC, 1999). Furthermore, a fixed allocation of 12.5 percent of the LSC grantees' budgets must used for Private Attorney Involvement (PAI), where attorneys in private practice provide legal services.

Not only do the Bar and legal aid organizations have mutual self-interest, the Bar may exert a strong influence on legal aid programs that support the Bar, more than the interests of the poor. Johnson (1987, p. 10) quotes the findings from a Russell Sage Foundation study:

> The effectiveness of Legal Aid is limited by its vulnerability to pressure from local bar and business interests, which are its principal financial supporters. The tendency, therefore, is for Legal Aid to become a captive of its principal financial supporters.

The ABA (1986) published *Standards for Providers of Civil Legal Services to the Poor*, which states: "Indigent persons should receive legal representation of a quality as high as the client of any lawyer." The LSC explicitly endorses these ABA standards by publishing the ABA document in its annual *Request for Proposals*. The LSC further endorses the objective of "high quality legal services" in its *Regulations* (LSC, 2000, p.113). The term "high quality" means using licensed lawyers to provide service, rather than paralegals, assisted pro se or numerous low cost technologies that compete with lawyers. The focus on the poor, as discussed above, means assisting those clients who do not compete with paying clients.

The Bar also interacts with state IOLTA organizations. More than one-half (28 of 51 states plus DC) IOLTA organizations are bar foundations that were established by the state bar. While the state bar foundations and state bar associations assert independence, these organizations may share the same buildings, office space, and even staff. Further, the state bar associations have significant representation on the Board of Directors of the bar foundations. The policies of the IOLTA organizations include allocating a major share of their budget to the same grantees supported by LSC, to avoid competition for grants, and to support "legal services for the poor". These policies are certainly in the self-interest of the Bar, and thereby likely to be influenced by the Bar.

Although the Bar, the LSC and the IOLTA organizations may each act in their individual self-interest, they also act in their joint self-interest. This joint self-interest supports the legal monopoly and supports the franchise monopolists that provide legal services for the poor.

6. Providing Legal Services: A Modest Proposal

The model of a monopoly indicates that monopolistic service providers will resolve fewer legal issues at a higher cost than competitive service providers. Empirical evidence confirms that IOLTA and LSC grantees do not compete for grants and are monopoly service providers in their service areas. This evidence raises a question about the "efficiency and effectiveness" of the legal services for the poor provided by these grantees.

6.1 LSC Reference Case Data

During 1999, LSC grantees reported closing 1,038,662 civil legal cases. The accuracy of LSC case data is subject to serious dispute, and the LSC also provides a more reliable and conservative estimate of 924,000 cases closed during 1999 (LSC, 2000b, p. 7).

During 1999, LSC provided grants and other support totaling $307,645,774, which accounted for 50.8 percent of the total funding (LSC, 2000b, p. 9). Total funding for all LSC grantees was therefore $605,601,910. Non-LSC funding was provided by state and local grants plus IOLTA, other federal grants and from private grants. Total funding per case closed was $583 and $655 using the higher and lower cases closed data presented by LSC. These figures do not accurately reflect the average cost of closing cases because some non-LSC funds are used for non-LSC cases; hence these numbers overstate the average cost per case.

The LSC reports that legal aid resources provided to the poor are far short of sufficient to meet their needs. The LSC (2000b p. 13) estimates, based on the 1994 ABA legal needs report, that LSC sponsored programs serve 20% of the eligible clients and 80% of the eligible clients are unable to attain needed legal assistance. LSC states further "Because of limited resources, local legal services programs are forced to turn away tens of thousands of people with critical legal problems." Accord-

ing to LSC, nearly half of all people applying for legal aid are turned away because of lack of resources. The conclusion of the LSC, that about 20% of the legal needs of the poor are currently being met, is widely accepted by the legal aid community.

Cases closed by LSC grantees typically do not require court action. In 1999, only 9% of the cases were closed with a court decision. In contrast, 50% of the cases were closed with counsel or advice, and 20% of the cases required brief service. As indicated by Table 7, at most 30% of the cases closed by LSC grantees require extended service. The cases that appear to require extended service include those settled by court decision, by agency decision, or settled with or without litigation, which total to 19% of the cases.

Table 7
Resolution of Cases Closed by LSC Grantees, 1999

Resolution of Case Closed	Percent of Cases Closed
Counsel and Advice	50
Brief Service	20
Referred After Legal Assessment	2
Client Withdrew	6
Settlement w/o Litigation	2
Settlement with Litigation	4
Agency Decision	4
Court Decision	9
Other	3

These LSC data present, what Zorza (2000) describes as, the governing paradigm for advocating legal services for the poor. This paradigm argues that the current system meets a small share of the legal needs of the poor and then argues for increased funding to meet more of these needs. Zorza asserts that service delivery innovations such as hotlines enable the legal service community to think about meeting 100% of these legal needs.

6.2 Telephone Hotlines

There is extensive experience and empirical evidence that telephone hotlines can provide brief service, counsel, advice and referrals at low cost. See the website *www.equaljustice.org/hotlines* for an introduction to this literature.

A review of the cost of hotline cases provides an insight into the possible costs for closing these cases.

- The Senior Legal Hotlines Annual Report (ARRP 2000) reports and average cost per case of $52.38.
- TELE-LAWYER operates a legal hotline for profit with 45 attorneys at an average cost of $30 per call.[15]
- A Florida hotline for seniors reports and average cost per call of $24.42.[16]

This small sample of hotline cost estimates is indicative of a larger literature that produces costs estimates in the $30 to $40 per call range. Allison and Pearson (2000) report the results of an assessment of 16 LSC grantees that introduced hotlines. As a result of introducing the hotlines, the average number of cases handled increased from 5,458 to 6,763 per grantee (24%), with almost all this increase being in brief service, hotline cases. The main conclusion of Allison and Pearson is that

[15] Shoshanna Erlich, "Legal Hotlines for Profit" interview with Michael Cane, founder TELE-LAWYER, The Equal Justice Network. website, www.equaljustice.org/hotline

[16] Shoshanna Ehrlich, "To Charge or Not to Charge" The Equal Justice Network, website, www.equaljustice.org/hotline

hotlines expand capacity, productivity and accessibility, but success is not guaranteed.

The Neighborhood Legal Services (NLS), Inc. of Buffalo, New York began using a telephone hotline in 1988, and kept records on case closings through 1994. Jim Morrissey, as executive director of NLS, presents a comparison of the pre- and post-hotline statistics using NLS data.[17] Morrissey presents the following results:

- Total cases closed from 1988—1994 increased by a factor of 2.5
- Cases closed by negotiated settlement increased by a factor of 4
- Cases closed by brief service, counsel and advice increase by a factor of about 4.
- Cases closed by most extensive service increased by a factor less than 2

By introducing the hotline, overall productivity—as measured by cases closed—increased significantly (factor of 2.5). Cases requiring brief service increased by the largest percent; cases requiring extensive service increase, but by a smaller percent. These productivity estimates exaggerate efficiency because the increase in cases closed also results from an increase in staff and an increase in budget. However, estimating cases closed per dollar still shows a significant increase from 1988 to 1994.

Legal aid organizations have used telephone hotlines for several years and with favorable results. The American Association of Retired Persons (AARP) uses hotlines in all 50 states. Wayne Moore (2000) of the AARP explains that a new method of telephone intake increases productivity by 250% and cuts costs by almost one-half. The new approach requires that programs divide their programs in to a legal advice unit and a brief service unit.

As discussed by Moore, the AARP operates two types of legal advice lines. The "Old Pennsylvania" hotline provides legal advice, information and referrals, but few brief services. The Washington DC model provides these services plus intake for the AARP full-service legal services program for low-income seniors.

Table 8 provides a comparison of attorney costs and cases handled in the three hotline models. The number of cases handled per year in the new AARP model is much higher than in either of the conventional hotline models. Further, the attorney cost per case is lower even though contract attorneys are paid at a higher rate than other ARRP attorneys.

Table 8
A Comparison of Three AARP Telephone Hotline Models

	Old Pennsylvania	Washington DC	New AARP
Services	Legal Advice, Info. Referrals	Legal Advice, Info. Referrals and Brief Service	Legal Advice, Info. Referrals
Attorneys	Staff	Staff	Contractors
Attorney Cost/Yr	$38,300	$38,300	$87,360
Attorney Cost per Client Served	$14.32 - $21.42	$19.39 - $29.02	$10.86 - $12.42
Cases Handled per FTE Attorney	2146	1584	7036

Source: Wayne Moore, (Fall, 2000), *A More Productive, More Versatile Legal hotline Methodology, A New Concept in Delivery – The Brief Service Unit*, from website, www.equaljustice.org/hotline

The new model uses a contract with Tele-Lawyer, Inc. to operate an advice line that they developed for their fee-for-service hotline. In this model, the lawyer provides no administrative tasks. Eligibility screening, conflict checking, call routing, collection of fees and other administrative tasks are performed by intake workers. Non-attorneys also conduct case development and investigation. This specialization and division of labor contributes to a significant improvement in productivity and

[17] Jim Morrissey, "Pre- and Post-Hotline Statistics and Timeline for NLS Implementations" Neighboorhood Legal Services, Buffalo, NY, undated memorandum to conference participants.

cost reduction. The law review literature refers to this approach as the "unbundling" of legal services (Mosten, 1994) and sometimes as discrete task services.

6.3 Providing Legal Services: A Modest Proposal

Alternative approaches are used to reduce monopoly power and encourage competition. One approach is to break up the monopolists; another approach is to unbundle their services. The government applied the first approach to Standard Oil in the early 1900s and to AT&T in the 1980s. Electric utilities and natural gas utilities have a franchise monopoly over their service territory. The approach to improving efficiency in these sectors is to unbundle their services, with the potentially competitive services being competed and the inherently monopolistic services remaining regulated. Applying the unbundling model to legal aid organizations suggests the use of telephone hotlines to provide brief service, counsel and advice, and using staffed offices to provide more extensive legal service.

Telephone hotlines operated as a separate business appear significantly more efficient than hotlines operated as part of a LSC supported staffed office. Several LSC grantees currently use telephone hotlines. According to the Allison and Pearson (2000), the results are positive but less than spectacular. The improvement in productivity of the LSC grantees (25% with increasing budgets) is much less than the improvement in productivity noted by Moore (factor of 2.5 with declining costs). The hotlines should be separate from existing LSC grantees and operated on a state or regional basis and funded with existing LSC program funds.

A competitive award system could be used to select a hotline provider, with bidding open to existing LSC grantees, other hotline providers, such as AARP, and for-profit providers, such as Tele-Lawyer. The winning bidder would operate the hotline for a period such as three years, when the award would be competed. Telephone hotlines could provide appropriate service in about 70% of the cases at a cost of about $30 to $40 if not less.

The LSC grants process could be subject to effective competition and could thereby reflect the will of Congress. The Regulations defining the terms of competition for LSC grants need major revision. Bidding should not be limited to full service providers over a complete service territory, where the only potential bidder is the existing grantee. Legal service providers that serve the disadvantaged—those with special needs—should be allowed to compete for LSC grants. Even with meaningful competition, these grantees may never receive a large share of the funding. Their contribution is to increase client choice and to impose a market discipline that encourages existing grantees to improve their productivity.

The unbundling of legal aid grants into telephone hotlines providing brief service and the introduction of effective competition for awards for more extended service would substantially improve the productivity of legal aid funding. Relaxing the enforcement of the UPL restrictions would result in further improvements. User-friendly court systems, modeled after Maricopa County, Arizona, are a positive contribution. The development and adoption of technologies that disseminate information have enormous potential to provide low-cost legal service to a large number of persons. The realization of the benefits of new technologies is improved by the development of a more competitive market for LSC grants and the provision of legal aid.

REFERENCES

Allison, C. and J. Pearson, (March, 2000). The Hotline outcomes *Assessment Study, Final Report—Phase 1*, Center for Policy Research, Denver, CO.

American Association of Retired Persons, (2000). *Senior Legal Hotlines Annual Report*, October 1, 1999—September 30, 2000, AARP Foundation.

American Bar Association, (1986). *Standards for Providers of Civil Legal Services to the Poor*, Chicago, Illinois.

American Bar Association, (1989). *Two Nationwide Surveys: 1989 Pilot Assessments of the Unmet Legal Needs of the Poor and of the Public Generally*, Consortium on Legal Services and the Public.

American Bar Association, (1994) *Findings of the Comprehensive Legal Needs Study*, Chicago, Ill., American Bar Association.

American Bar Association, (1999). *Annotated Model Rules of Professional Conduct*, Chicago, Ill., American Bar Association.

American Bar Association, (August, 1998). *IOLTA Handbook, Commission on Lawyers' Trust Accounts*, Chicago, Illinois.

Advisory Council of the Maryland Legal Services Corporation, (1988). *Action Plan for Legal Services to Maryland's Poor*, Baltimore: Author.

Alterowitz, M. (November, 1997). "Pro Bono Publico", *Montana Lawyer*, 23, 5–6

Barry, M. M., (April, 1999). "Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro bono Legal Services and Should Law School Clinics Conduct Them?" *Fordham Law Review*, 67, pp. 1879–1926.
Broadway, R. W. & Wildasin, D. E. (1984). *Public Sector Economics,* Second Edition, Boston: Little, Brown and Company.
Cahn, E. and Jean Cahn, (1964). "The War on Poverty: A Civilian Perspective" *Yale Law Journal*, Vol. 73, pp. 1317.
Cantril, A. (1996). *Agenda for Access: The American People and Civil Justice: Final Report*, Consortium of legal Services and the Public, American Bar Association, Chicago, Ill.
Christensen, B. F. (1980). The Unauthorized Practice of Law: Do Really Good Fences Really Make Good Neighbors—or Even Good Sense?" *American Bar Foundation Research Journal*, Spring, pp. 159–216.
Committee on Legal Aid, (1993). *The New York Legal Needs Study*, Albany, New York: New York State Bar Association.
Crandall, Robert and Jerry Ellig, Economic Deregulation and Customer Choice: Lessons for the Electric Industry, Center for Market Processes, Fairfax, VA, 1997.
Curtin, T. quoted in *Lawyers Weekly*, July 3, 1995 by Kenneth F. Boehm and Peter T. Flaherty, "Legal Disservices Corp.: There Are Better Ways To Provide Legal Aid To The Poor" *Policy Review*, Fall 1995.
Eldred, T. & Schoenherr, T. (1993/94). "The Lawyer's Duty to Public Service: More than Charity?" *West Virginia Law Review*, 96, 367–403, Winter.
Engler, R. (April, 1999). "And Justice for All—Including the Unrepresented Poor: Revisiting the Role of Judges, Mediators and Clerks," *Fordham Law Review*, 67, pp. 1987–2070.
Fried, D. "Legal Outcomes", citipaper.net, March 20–27, 1997.
Granat, R. S. (2000). "Creating A Network of Community-Based Pro Se (Self-help) Legal Information Centers" available on the Equal Justice Website.
Hendersen, J. & Quandt, R. (1980). *Microeconomic Theory: A Mathematical Approach*. New York: McGraw-Hill Book Co.
Ibelle, B. (1995). "Controversial ABA 'Nonlawyer Practice' Report Due in August" *Lawyer Weekly USA.*
"Introduction: The Inspector General Community" *The Journal of Public Inquiry*, Spring/Summer 2000, pp. 3–8.
Johnson, Earl Jr, (1978). *Justice and Reform: The Formative years of the American Legal Services Program*, New Jersey: Transaction Books.
Lardent, E. (2000). Personal communication.
Legal Service Corporation, (annual editions) *Request for Proposals : FY 2001 Grants Competition, Appendices*, Washington, DC.
Legal Service Corporation, (January, 2000). *Regulations of the Legal Services Corporation*, Washington DC. This LSC report is reprinted from the U.S. Code of Federal Regulations, Title 42, Section 2996, Part 1600.
Legal Services Corporation (2000b). *Serving the Civil Legal Needs of the Low-Income Americans: A Special Report to Congress*. Washington, DC, April 30.
Legal Services Corporation, "Announcement of Intention to Make 2000 Competitive Grants Awards" *Federal Register*, Vol. 64, No. 188, pp. 52551–52556.
Moore, W. (2000). *A More Productive, More Versatile Legal hotline Methodology: A New Concept in Delivery—The Brief Services Unit, The Equal Justice Network, website www.equaljustice.org/hotline.*
Mosten, F. (Fall, 1994). "Unbundling of Legal Services and the Family Lawyer", *Family Law Quarterly*, 28, pp. 421–449.
Posner, R. (1995). *Overcoming Law*, Cambridge Mass.: Harvard University Press.
Rhode,D. L. (1996). l. "Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice", *New York University Review of Law and Social Change*, 22, 701–716.
Rhode, D. L. (January, 1998). The Professionalism Problem, *William and Mary Law Review*, 39, 283
326.
Rhode, D. L. (1999). "Cultures of Commitment: Pro Bono for Lawyers and Law Students" *Fordham Law Review*, 67, 2415–2447.
Survey Research Laboratory, Virginia Commonwealth University for the Virginia State Bar, (July, 1991). *Pro Bono and the Legal Needs of Indigent Virginians*.
U.S. Congress, *Omnibus Continuing Resolution*, H.R.3019: Public L. 104–134, 110 Stat. 1321–50. (4/26/96).
U.S. Congress, *The Legal Services Corporation Act as Amended 1977*, public law 95–222, Dec. 28, 1977, p. 2.
U.S. Department of Commerce, (1999). *Statistical Abstract of the United States: The National Data Book*, U.S. Bureau of Census, Washington DC.

Zorza, Richard, (October, 2000). *Legal information Needs of Poor and Middle Income People and the Organizations that Advocate For Them, Interim Executive Report: Introduction and Summary, see website, www.zorza.net*

MATERIAL SUBMITTED FOR THE HEARING RECORD

April 5, 2002

The Honorable John M. Erlenborn
President
Legal Service Corporation
750 First Street, NE 11th Floor
Washington DC 20002-4250

IN RE: Follow Up Record Questions for the February 28, 2002 Oversight Hearing of LSC

Dear Mr. Erlenborn:

Thank you for your February 28, 2002 testimony before the House Judiciary Committee Subcommittee on Commercial and Administrative Law's *"Oversight Hearing of the Legal Services Corporation."* As advised at the close of the hearing, the Subcommittee is requesting you expand on your answers in certain areas covered at the hearing, and also answer a number of additional questions the Subcommittee did not have the time to address at the hearing. These questions and your responses will be included as part of the official hearing record and will be subject to 18 U.S.C. §1001.

A. Questions Pertaining to the Activities of The Erlenborn Commission

1) During the February 28, 2002 hearing, you testified that the activities of the Erlenborn Commission, as well as the Erlenborn Commission Report was funded by the LSC? Please advise the total cost, including an itemized list of expenditures, for both the activities of the Commission and the Report.

2) Was the Erlenborn Commission established pursuant to 45 C.F.R.§1601.27, as a formally designated subdivision of the Board?

3) Aside from the two public hearings noticed in the Federal Register, was there any debate or deliberations by the Commission, whether by meeting or

teleconference, held behind closed doors (i.e., not open to the public) and not noticed in the Federal Register, as required by the regulations? If so, please advise the date(s), time(s), and location(s) of such meeting(s).

In addition, 45 C.F.R. §1622.8 requires "the Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public." In your testimony on February 28, 2002, you advised this Subcommittee you would provide a copy of the transcript from the closed-door deliberations of the Commission. Therefore, as required by the regulations and promised to Congress at the hearing, please provide the transcript of the meeting(s) where the Commission debated, deliberated and reached its interpretative conclusion of the "is present" language of Public Law 104-134 § 504(11). Does the LSC maintain that the LSC's Board discussion leading to the conclusions reached in the Erlenborn Commission Report was a proper topic to be discussed behind closed doors, especially in light of the regulations of Government in the Sunshine Act?

4) From November 16, 1998 until the date the LSC Board changed its alien representation regulation, please list by date every executive closed-door session held by the LSC board. Did the LSC Board discuss any aspect of the Erlenborn Commission during any of its executive closed door sessions during the period just described? If so, was the discussion topic properly noticed in the Federal Register?

5) In light of the significant impact the Commission's decision has on this nation's agricultural community, why were only members of the academic community chosen to serve on the Commission and not any members of the agricultural community? Please explain to the Committee the Board's reasoning that a commission comprised solely of law professors is a panel capable of a fair interpretation of this regulation?

6) The word "is," as used in the statutory language in question, limits any legal assistance to an alien who "is present in the United States." Is it a correct statement to find the Commission concluded that legal assistance could be provided to an alien who was ever present in the United States? Please advise the Subcommittee the Commission's interpretation and definition of the word "is" as used in Public Law 104-134 §504(11)?

7) The regulation 45 C.F.R. §1622.10 states "the Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. §552(b), including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. §522(b), including any costs assessed against the Corporation in such litigation." Please provide the Subcommittee with copies of these reports from 1996 to the present.

8) The Subcommittee received testimony about legal services lawyers who were caught on videotape traveling into Mexico in 1999 to solicit clients. The involved North Carolina program was fined $17,000, the cost of the trip, in violation of the statute prohibiting such solicitation. Does LSC permit lawyers funded by LSC to make trips to foreign countries to provide outreach or education? If so, please provide a statement of LSC's policy regarding foreign travel for these purposes. Please describe how LSC monitors its programs for improper foreign travel and describe each and every instance, since 1996, of improper travel by LSC grantees to foreign countries? Do you agree with the statement that solicitation of business in foreign countries, such as Mexico, by LSC funded attorneys is in violation of existing federal statute? If so, what is the Corporation and the Board doing to discourage such actions by its grantees?

Please provide the Subcommittee with actual LSC expenditures on foreign travel by its programs since 1996? Please provide the name of the program, the total amount spent, and the reason for the foreign travel.

Since 1996, how many complaints has the Corporation received involving legal assistance to aliens who were outside the United States at some point during which legal assistance was rendered by an LSC-funded lawyer? Please specifically identify the complainant, the grantee, the case name, and a summary of LSC's actions in each case.

9) The Subcommittee has received information involving activities of one of the Georgia legal services groups and request you please provide further clarification to us. An LSC-funded attorney has filed suit against G & R Farms, a Georgia Vidalia Onion producer, on behalf of forty workers who planted onions for G & R in 1999. In 1999, an LSC-funded attorney visited the labor camp and had the forty workers sign up to have this attorney represent them. When the statute of

limitations was about to expire in November of 2001, the LSC grantee filed suit in order to toll the statute. Apparently, only one of the forty workers can now be found and he is an illegal alien. Of course, the Erlenborn Commission's interpretation of the alien representation provision appears to "open the door" and allow the LSC-funded attorneys to search in Mexico for these illegal aliens and provide them with representation. However, It is believed all of these workers are ineligible for representation due to their illegal immigration status. Does the Corporation believe, based on the Erlenborn Commission's findings, these illegal aliens are now eligible for representation?

Please advise the Subcommittee a complete, detailed explanation of the litigation methods of this LSC-funded attorney. Of particular interest to the Subcommittee is the allegation these workers are receiving representation prior to any claim of harm or injury. Does the Corporation support such actions by LSC-funded attorneys?

The Subcommittee is quite concerned about this report and is requesting a complete and full investigation of all the facts and circumstances of the representation of these forty workers. In addition, please provide us with copies all of discovery and court documents, including the original Complaint.

B. <u>Questions Pertaining to the LSC Inspector General's Office and Functions</u>

1) LSC Inspector General Edward Quatrevaux wrote a letter to U.S. Representative Harold Rogers, Chairman of the House Appropriations Subcommittee, on September 14, 2000. This letter was discussed at the February 28, 2002 hearing of the Subcommittee and is posted on the web page of the LSC Inspector General (IG). The LSC IG's letter states that grantees had repeatedly denied the IG access to information and the LSC President and Board of Directors had "undermined the OIG by encouraging grantees to refuse to provide information to the OIG." Please identify the following: the information the IG requested, the LSC programs that refused the IG the requested information, and the reason given by the LSC programs to support its denials.

2) In the same letter of September 14, 2000, the IG went on to state "LSC management has also accepted denials of access to records when attempting to conduct its own compliance inspections, and acceded to ineffective inspection procedures suggested by grantees being inspected." Please identify each and

every LSC program that has denied the Corporation access to documents since the 1996 reforms took effect. Your answer should include the following information: the name of the LSC program, the type of document(s) sought, the date of the refusal, the reason given to refuse access to the requested records, and whether the LSC ultimately obtained access to the information in question.

3) The LSC IG's September 14, 2000 letter also described an instance in which two grantees refused to comply with IG subpoenas and he sought enforcement with the U.S. District Court. The Court ordered enforcement, but one grantee appealed and the matter was pending at the time the IG wrote his letter. Identify the LSC program which refused to comply with the subpoena and describe the outcome of the appeal.

4) Shortly after the LSC IG's September 14, 2000 letter to Representative Rogers accusing LSC's President and Board of Directors of undermining the IG by encouraging grantees to refuse to provide information to the IG, it was announced that the IG was no longer employed by LSC. As asked at the Subcommittee's hearing, was the IG terminated or pressured to resign by the Corporation or the LSC Board? Please explain for the Subcommittee the circumstances under which IG Quatrevaux left his position at the Corporation.

Please provide complete transcripts from all LSC Board meetings held from August 2000 through January 2001. In particular, the Subcommittee is interested in all discussions that involve access to records by the OIG, the OIG's letter to Congress, and the circumstances surrounding the termination of IG Quatrevaux.

5) The LSC IG's September 14, 2000 letter refers to an instance in December 1999 when LSC management entered into a written agreement with Westchester/Putnam Legal Services to accept "unique identifiers" in place of having access to client names. At the same time this grantee, Westchester/Putnam Legal Services, was the subject of a complaint filed with the Corporation which discussed the allegations of John Hand, an LSC attorney for 20 years, who wrote a letter to the editor of Investor's Business Daily claiming the grantee had engaged in unethical practices. Mr. Hand's letter stated, "One of the practices was the counting of virtually every telephone call as a "case" in order to build up numbers to report to the LSC and other funders. Consequently, hundreds, if not thousands, of reported cases were nothing more than referrals or other responses given by paralegals or secretaries." LSC dismissed this complaint.

In 1997 Congress decided that access to certain information, such as individual client names, was so important the LSC Act was specifically amended by Public Law 105-119 §505(b)(1), which provides specific access to this type of information. Why did LSC waive this specific statutory authority, designated to it by Congress, and enter into this written agreement with Westchester/Putnam Legal Services? How exactly does the Corporation contemplate it can accurately determine if the grantees cases are both client eligible and not violating the congressional restrictions, without client names?

How was the complaint of Mr. Hand handled by the Corporation? Was a complete investigation ever done? If so, what specific evidence was collected to support or deny the allegations? If not, why was such a serious allegation not fully investigated? Please advise the reason LSC dismissed the complaint against Westchester/Putnam Legal Services and what specific corrective actions, if any, were taken against this grantee.

6) The LSC IG's letter of September 14, 2000 concluded, "LSC management has demonstrated that it does not intend to use the authority granted by the appropriations statute. The compliance inspection procedures it adopted at the suggestion of grantees are ineffective." Are the compliance inspection procedures adopted by LSC at the suggestion of the grantees still in place? Please describe those procedures in detail.

7) The LSC IG's letter also charged, "In September 1999, LSC management attempted to conduct a compliance review of Legal Aid of Western Missouri, but was refused access to client names and eligibility data (e.g., income, assets, citizenship). After ten months of negotiation, in July of 2000 LSC management agreed to accept unique identifiers in lieu of client names. This occurred after a court decision confirmed LSC's statutory access and while some OIG court actions on the access issue were pending."

Again, why did LSC agree to accept "unique identifiers" instead of client names when it has the specific legal authority to obtain client names? Who made the decision to accept "unique identifiers" instead of client names? Was this decision approved by the LSC Board and, if so, when? Does LSC disagree with the court, which decided that it has statutory authority to request client names, in cases such as this? Does LSC continue to request client names from other programs, in cases like Legal Aid of Western Missouri, or does LSC continue to waive access to this important information?

C. Questions Regarding Access to Records

1) We would like clarification regarding the Corporation's interpretation of 45 C.F.R. §1622 entitled "Public Access to Meetings Under the Government in the Sunshine Act." Section 1622.3 provides that "Every meeting of the Board or a council shall be open in its entirety to public observation except as otherwise provided in §1622.5." Do you agree with this regulation and can you advise this Subcommittee whether the Board has been in full compliance with this regulation in the past two years?

2) The regulations go on to state in §1622.8 that "The Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public." Do you agree with this regulation and can you advise this Subcommittee whether the Board has been in full compliance with this regulation in the past two years? Critics of LSC charge that the Board meeting minutes are revised past their actual meaning. If this is true, the Board is not in compliance with the regulations. Can you please address this criticism and inform this Subcommittee as to the accuracy of the records of meetings of the Board and the Corporation?

3) Please advise the Subcommittee how the Board and Corporation reaches its decision making process in the following areas: promulgating federal regulations; remedial action with regard to grantees, and adoption of general policies of the Corporation.

4) Please provide the Subcommittee with a schedule of the upcoming on-site monitoring visits. This request does not refer to technical visits, but rather to scheduled compliance visits.

Please describe the compliance monitoring cycle of LSC recipients and the scope of a typical compliance visit. Please advise the current number of LSC recipients and how often each LSC recipient is visited by an LSC monitoring team? Has every program been visited by a compliance monitoring team in the past three years? If not, why not?

Please provide to the Subcommittee with a list of all programs that have not received an on-site LSC compliance review in three years or more, and indicate number of years that the program has gone without a review.

5) How can LSC ensure this Subcommittee and the taxpayers that the restrictions of the LSC Act, regulations, and annual appropriations riders, are complied with if on-site monitoring is not a routine part of the Corporation's oversight? Does LSC management rely on the year-end audits as a substitute for periodic oversight and on-site monitoring visits to grantees by LSC staff? How many on-site visits have been made annually from 1991 through 2001 to LSC programs by LSC staff for compliance or oversight purposes?

6) Please provide the Subcommittee with a copy of all transcripts from LSC Board meetings, from 1996 to present, in which the Board addressed, discussed or was informed about access to documents by either the OIG, LSC management, or other LSC oversight groups, such at the LSC Enforcement & Compliance Division. Please also advise the Subcommittee whether there have been any other discussions, during this same time period, involving LSC Board members regarding these access issues and provide us with the appropriate documentation of the same.

7) Please explain each instance which has occurred from 1996 to present, in which any access to documents has been denied or restricted by an LSC grant recipient. For each instance please provide the following: the program name and location, the documents denied, the position taken by LSC management regarding the denial of access, an accounting of the documents ultimately provided, if any, and the sanctions imposed by the Corporation against the grantee.

8) Please provide all LSC General Counsel opinions concerning the access to documents issue, from 1996 to the present.

9) Please provide all LSC General Counsel opinions concerning the Government in the Sunshine Act regulation. Please also advise if the General Counsel has considered the implications that might arise under the LSC Act in respect to your dual status as LSC President and Board member?

10) Please immediately advise the Subcommittee, in writing, of any intention of the Board to revise the access to records policy of the Corporation at the April 5-6, 2002 Board meeting. If the Board is planning to provide the Corporation with a new access protocol, this action is inappropriate at this time since President Bush nominated five new Board members on Monday March 25, 2002 and this remains the prerogative of the new Board. Please comment on this access protocol and the appropriateness of the same.

Please also advise, in detail, all action, discussions, meetings and changes to LSC policy or regulations which are anticipated to take place during the April 5-6, 2002 Board meeting.

D. Questions Regarding Lobbying by LSC Grantees and the case of *Regional Management Corp. v LSC*

1) In the Fourth Circuit case *Regional Management Corporation v. LSC,* cited by both Attorney General Meese and Mr. Boehm during the hearing, U.S. District Judge Herlong found, "This short history of Polite's case, combined with the stern language in the LSC guidelines, demanded a more thorough investigation of this matter by LSC. Due to this failure to fully develop the factual record, LSC's decision that Berkowitz did not improperly lobby the General Assembly is without rational basis." LSC then successfully appealed the Judge Herlong's decision by arguing that as a private corporation, LSC is not subject to judicial review. However, it appears LSC never sanctioned either the lawyer who conducted the lobbying or the involved grantee.

Please explain to the Subcommittee why LSC failed to take any action to enforce the statutory ban against political lobbying? In *RMC,* the client did not know the lawyer was lobbying on her behalf and was not a client at the time the lobbying took place. Please advise whether LSC agrees that legal services lawyers may lobby on behalf of individuals, and do so without a clients awareness or consent.

2) U.S. District Court Judge Herlong's decision included his view that," Berkowitz's lobbying of the South Carolina General Assembly transgressed the clear language of federal law and LSC guidelines." Please advise how the Corporation reached its final decision to dismiss the complaint made by Regional Management Corporation?

3) Please list all complaints LSC has received, since the 1996 reforms took effect, alleging improper lobbying by LSC programs. Please specifically identify the following: the identify of the complainant, the program which was the subject of the complaint, the nature of the complaint, LSC's final decision, the date the complaint was received by LSC, and the date its decision was rendered.

4) It has been brought to the attention of this Subcommittee the Georgia Legal Services Program (GLS) intends to submit an amicus curiae brief in opposition to the recent decision by the Georgia Superior Court in *Georgia Dep't of Human*

Resources v. Sweat. Of course, the original 1974 Legal Services Corporation Act provides "No class action suit, class action appeal, *or amicus curiae class action may be undertaken directly or through others, by a staff attorney."* In addition, the 1996 congressional reforms and subsequent regulations specifically prohibits grantee attorney's from engaging in such work. Please advise if the Georgia program is, in fact, filing an amicus curiae brief in this case and how the Corporation intends to handle this situation.

In a matter related to this issue involving child support cases, it has been alleged that GLS systematically refuses to represent income-qualified non-custodial parents. Please advise if this is the case and explain how GLS can systematically exclude one group of potential clients. Please provide to the Subcommittee a list from GLS of the names and total number of child support and custody cases where GLS represented the non-custodial parent in the last five years.

E. Questions Pertaining to LSC Regulations, including Alien Representation and Financial Eligibility

1) In a legal opinion issued by LSC's Office of General Counsel on December 3, 1999 responding to request for clarification of alien representation from the Executive Director of the Virginia Legal Aid Society, the OGC concluded "A group found to be financially eligible under §1611 in not disqualified from eligibility if members of or persons served by the group are not United States citizens or aliens eligible for legal assistance under §1626" and "thus, the citizenship and alien provisions in §1626 do *not* apply to group eligibility."

This statutory interpretation by the Office of General Counsel appears, on its face, to be in blatant violation of both the federal law and the federal regulations. Specifically, this interpretation violates the alien eligibility requirements set forth in 45 C.F.R §1626.5. Please note however, there is no provision in the Act or regulations which waive the prohibition against representation of illegal aliens simply because they are part of a group. In addition, Congress has clearly mandated that LSC programs do not participate in class action lawsuits. Please identify for the Subcommittee what other kind of group representations, besides class action lawsuits, your General Counsel finds permissible?

How can LSC justify serving illegal aliens through group representation? Please provide copies of all LSC General Counsel opinions that address the following areas: financial eligibility of clients, client retainers, class action representation,

client identity, and the requirement to provide access to client identifying information, including client names.

2) Although there have been no recent changes in the underlying LSC Act or appropriations legislation, the Subcommittee notes a number of notices in the Federal Register of proposing changes to various regulations placed on the Corporation. Why are the specific regulations involving client eligibility, client retainer, and citizenship and alien eligibility, specifically 45 C.F.R. §1610, 1611,1622 and 1626, being reviewed? Please describe, in detail, the current effort to change these regulations. Please specifically describe for the Subcommittee the following: the proposed changes, the reasons the changes are under consideration, documentation of all meetings, memos, letters, etc. regarding the proposed changes, and when the proposed changes are anticipated to be finalized.

Are there any other regulations that this Board intends to attempt to change prior to being replaced by President Bush's new Board of Directors? If so, please advise the specific federal regulation the Board is considering changing and explain why the changes are under consideration at this time.

3) A recent Federal Register notice stated that LSC was utilizing Negotiated Rulemaking for regulatory changes. Could this be inefficient, in that a new LSC board was just named by President Bush this week, and it would have their own management staff representing the position of LSC, rather than management staff who were hired by the previous Board? Why does the Corporation appear to be in such to enact major changes to LSC regulations and policies?

Is LSC adhering to the Negotiated Rulemaking Act (5 U.S.C. §561 et. seq.) as it seeks to promulgate these regulations? As a result of their participation in the process, will these stakeholders be forbidden to challenge the resultant regulations in court? Is the Brennan Center one of the stakeholders? If so, has the Corporation or the Board waived the requirement that stakeholders to a negotiated rulemaking not challenge the regulations in court? Is so, why would the Corporation extend such an agreement contrary to the rationale of having such groups, as the Brennan Center, participating in the negotiated rulemaking process?

4) In contemplating changes to 45 C.F.R. §1626, the regulation involving alien representation, has the Corporation or the Board considered its implications in the War on Terrorism

On the LSC website of recent press coverage, there is an article from the Chicago Tribune titled "Arabs are Offered Legal Aid; Groups Set to Aid Those Called for 9/11 Questioning." Is the LSC funded recipient in Chicago assisting any alien persons or alien students who are being investigated for potential crimes against the United States? Has the Corporation considered this possibility? What is the LSC doing to monitor this situation and to ensure that no LSC funds are expended in violation of the law?

5) What sanctions has LSC taken against any program for a violation of the LSC Act or regulations in the past 24 months? Does LSC routinely sanction programs for serious violations of the LSC Act or regulations? If there have been no sanctions, is the Subcommittee to assume that the Corporation has encountered 100% compliance by all LSC programs?

F. <u>Questions Pertaining to Program Integrity and Mirror Corporations</u>

1) Has LSC identified which of its funded programs share office space and/or are located in the same building as a group performing restricted activities? If so, please identify all such LSC programs along with the name of the group undertaking restricted activities.

Has LSC identified which of its funded programs share a common staff member with groups involved in restricted activities? If so, please identify all such programs along with the name of the group with shared staff.

Has LSC identified which of its funded programs share common directors with groups involved in restricted activities? If so, please identify all such programs along with the name of the group with which they share a director.

2) Please describe in detail what steps LSC takes to ensure that the Program Integrity regulation, 45 C.F.R. §1610, is being properly enforced. Please identify all complaints LSC has received, from 1996 to present, regarding potential violations of the program integrity regulation. This information should include a list of the programs involved, the name and address of the complainant, a summary of the allegations, a summary of action taken, and the date the complaint was received and subsequently answered.

3) The LSC Inspector General issued Audit Report No. 02-01 in October 2001 dealing with the activities of LSC grant recipient Lane County Legal Aid Service,

Inc. The LSC IG found that there was a close working relationship with the Lane County Law and Advocacy Center, an unrestricted program. The IG's Report stated, "The grantee and Advocacy Center are co-located in the same building with little to distinguish between the organizations. The organizations share both professional and administrative staff and are linked financially through payments for rent and services. In our opinion, the organizations are virtually indistinguishable to clients and individuals not aware of the working arrangements under which the organizations function."

Has LSC found the relationship documented between the grantee and the Advocacy Center in this case to be a violation of the Program Integrity regulation, 45 C.F.R. §1610? If not, please explain why not? As LSC has the responsibility to enforce its regulations, how is it that this apparent breach of the regulation was not discovered by LSC first? When was the relationship between the grantee and the Advocacy Center first brought to LSC's attention?

4) A January 7, 2002 article in the Legal Times titled *"Divide and Conquer,"* appears to promote the "mirror corporation" strategy as a method for legal services lawyers to engage in restricted activities. Does this article concern you and what is the Corporation specifically doing to insure program integrity, in light of this information?

5) Please describe to the Subcommittee what specific factual evidence would result in the Corporation finding a program has violated 45 C.F.R. §1610.8. the Program Integrity regulation? Please provide a list of every program the Corporation has found in violation of this regulation. What action has the Corporation taken against such programs?

G. <u>Questions Pertaining to State Planning and Reconfiguration of LSC State Programs</u>

1) Please generally describe the Corporation's efforts at state planning. How does the Corporation ensure that Grantees do not use LSC resources on prohibited areas of practice when conducting state planning activities?

2) The Special Report to Congress dated September 2001 (September 2001 State Planning & Reconfiguration – A Special Report to Congress) is confusing. It can be read as directing statewide coordination of services either within the LSC-funded programs only, or as a coordinated effort between both the LSC and non-

LSC funded programs. Which reading of this document is correct? Did LSC direct its recipients to coordinate the delivery of legal services with programs that conduct prohibited work? If so, is the LSC currently still engaging in such a directive? If yes, why did LSC direct its recipients to work with non-LSC programs that conduct prohibited activities?

3) We draw your attention to "Part VI: Conclusion" of the September 2001 report which states:
"In an overwhelming majority of instances, LSC has used the competitive bidding process to forge deeper bonds with its grantees and stakeholders, allowing LSC to serve as an active partner in planting the seeds of comprehensive, integrated state justice communities nationwide."

We also note that the LSC Strategic Directions 2000-2005, as posted on the LSC website, states on page four "Through the State Planning Initiative, LSC seeks to facilitate the creation and maintenance of comprehensive and integrated civil legal services delivery systems, coordinated statewide."

Does LSC view itself as responsible to ensure that all low-income clients, including those who are specifically prohibited by statute from receiving service from LSC grantees, are being served within the integrated service delivery model? If yes, why is LSC expending resources to coordinate services to clients that Congress has prohibited from receiving such services? How much money and time has LSC spent in this effort?

4) Prior to the 1996 statutory requirement for competition for LSC grants, some states were served by only one LSC-funded program. In those states, did the LSC direct coordination of the delivery of service work between restricted and non-restricted programs? If yes, with whom did LSC conduct such coordination? In addition, why would LSC coordinate with non-LSC funded entities? What LSC resources have been used to coordinate services between prohibited and non-prohibited programs? Please identify how much money, as well as LSC-funded staff time has been expended in this manner. In addition, please explain how this work is justified under the restrictions that LSC funds should not be used to support prohibited activities?

H. <u>Questions Pertaining to Competition for LSC funds</u>

1) Is it the opinion of the Corporation, that it has met its overall mandate to facilitate competition in awarding federal grant monies to programs nationwide. Is so, please explain to the Subcommittee how the Corporation has met this congressional mandate?

2) How many competitions for program grants have occurred since competition went into effect in 1996? In how many of these competitions was there more than one competitor for a grant? Please identify all competitors in which more than one competitor existed. List the incumbent program, the name and address of the competitor, and the results of the competition.

Since competition for LSC program grant began in 1996, in how many cases did an incumbent LSC grantee lose to a program which had never received a grant from LSC? Please identify all such competitions by the name and address of both the incumbent program and the successful challenger and the date the grant was awarded.

3) Since competition began in 1996, how many complaints has LSC received from all sources regarding its administration of competition. Please identify each complaint by listing the complainant, the date of the complaint, the name of the incumbent program in the competition, the nature of the complaint, and LSC's determination as to the validity of the complaint.

4) Since Public Law 104-134 was passed by Congress in 1996 requiring the "LSC to implement a system of competitive award of grants and contracts," how many new recipients have been funded from the private sector? In that same time period, how many pre-existing programs have continued to receive funding? And, how many recipients that were formed by previous LSC recipients have been funded?

5) If prior LSC recipient staff were involved in setting up a new grant recipient program, did a prior LSC recipient maintain any level of control over the newly formed entity receiving the LSC funds?

6) Has the total number of LSC recipients increased or decreased since competition began? Can you describe the specific criteria and standards used by LSC in order to create a larger service area? Is this criteria recorded in writing? If so, please provide the written criteria to the Subcommittee. If not, as the President of the Corporation and long-time Board member, do you not find a

problem with the potential for great subjectivity to exist in the awarding of millions of dollars in federal funds?

7) Currently, how many states are served by a single LSC recipient? How does the number of current statewide programs compare to the number of statewide programs before the competition initiative?

8) Does LSC consider the impact that its funding decisions would have on the delivery of services to clients that are prohibited from getting services? And, is it a factor in reaching funding decisions? For example, does LSC formally or informally consider how consolidating three programs in Texas will affect an illegal immigrant's ability to obtain legal services through a non-LSC recipient?

9) What evidence does LSC rely upon to support a statewide service area will increase the possibility of obtaining competition?

10) What is the length, in number of years, of the typical LSC competitive grant? Has the number of programs receiving longer grants increased in recent years? If so, why? Please provide to the Subcommittee the number of grant years for each current recipient beginning with the January 1, 2002 calendar year awards.

11) How does LSC document a decision to award a grant to a new recipient if there had previously been more than one applicant for a service area? Please provide such written documentation to the Subcommittee.

12) Describe the state planning efforts in Texas. Are all funding decisions now finalized? Please provide all documentation supporting the decisions to reconfigure the service areas in Texas and Louisiana, including all memoranda, letters, and reports relevant to the funding decisions.

In addition, it is our understanding that the Texas Rural Legal Aid Society (TRLA) will now consist of a group of consolidated programs and is, by far, the largest legal aid provider in the state. As discussed at the Subcommittee's hearing, TRLA was the program which linked their home page to the "TaxRebatePledge.org" website listing "Organizations Fighting Against Bush's Agenda." Of course, TRLA's website is paid for with federal funds. During the hearing, you testified to the Subcommittee that you were not aware of this website but would investigate it. Several weeks have passed since the hearing, please advise what actions the Corporation has taken to investigate this matter and

provide a complete and detailed explanation to the Subcommittee on this improper use of federal funds. Please also advise why TRLA is involved in partisan political activities and is listed on a website which clearly states it opposes President Bush and his agenda.

13) Critics have cited problems with the State Planning effort in Michigan. Can you describe that process, and what occurred? We are aware that the state bar in Michigan opposed the initial LSC plan in early 2001, and then LSC retreated from its initial decision regarding new service areas. On what factors did the LSC base its original decision? Was the procedure used to determine new service areas in Michigan the same procedure in other states? If it was different, what was the difference?

If the original Michigan decision was based on the standard process conducted by LSC staff, why did LSC change its position? Please provide to the Subcommittee all memoranda, letters, reports, or other documents that involve the state planning process in Michigan. This request includes all correspondence to any LSC recipient in Michigan or any planning group, regarding state planning and all documentation involving how LSC reached its initial decision, that was not enforced.

14) During the hearing, the 1997 Philadelphia case in which the private law firm of Dessen, Moses & Sheinhoff placed a competitive bid to set up a new, more efficient program but was forced to withdraw its bid because of pressure from the existing program. Part of the pressure the Dessen firm experienced was picketing outside their offices, as reported by *The Legal Intelligencer* on February 25, 1997 and March 19, 1997. One of those picketing the Dessen bid was Roger Ashodian, President of the Delaware County Legal Assistance Agency. It was reported that he is the same attorney who had previously been sanctioned by the court in 1992 for unethical tactics to increase litigations costs in a lawsuit filed against a non-profit group that provided affordable housing for the poor. At the hearing you testified to the Subcommittee you did not have any recollection of this case or Mr. Ashodian and did not know if he was still employed as a legal services attorney. Please advise what your follow up investigation has determined about the status of employment of Mr. Ashodian. In addition, please provide a report of this specific bid competition. Why were the LSC-funded attorneys not sanctioned, even though they clearly violated the statute which prohibits picketing?

I. <u>Questions Pertaining to the Case Over counting Issue</u>

1) It is the Subcommittee's understanding the Corporation recently submitted your official case handling statistics to the House Appropriations Committee. Please advise the 2001 official case counting statistics. How many cases were opened in 2001? How many cases were closed in 2001? What is a breakdown, by category, of the types of cases handled in 2001?

2) Please advise if senior management at the Corporation is taking steps to extend current employment contracts. If so, under what authority and for what reasons are such actions being taken? What types of "parachute" provisions are currently being considered and made part of these contracts? Is this action inappropriate in light of the fact President Bush just announced five of the new LSC Board members and it is traditionally the function and prerogative of the sitting President's Board to appoint officials of the Corporation?

3) Section 1008(c) of the Legal Services Corporation Act states in part "The Corporation shall publish an annual report which shall be filed by the Corporation with the President and Congress." Please advise the Subcommittee if the LSC has prepared and submitted to the President and Congress annual reports, as required by the Act, for LSC program years 1996 through 2001. If so, please provide us with a copy of such reports.

4) The "1997 Fact Book to Congress" was submitted by the LSC and contained grossly inaccurate figures about the number of cases actually handled by the grantees, which led to the GAO's investigation and report in 1999. When was the last Fact Book submitted to Congress? Please submit to the Subcommittee the Fact Books for Fiscal Years 1997 through 2001. Did past case counts submitted to Congress include counting of both open and closed cases or just closed cases? Prior to 1996, did LSC report to Congress just closed cases or the total number of open and closed cases handled during the applicable fiscal year? If there was a change after 1996, what motivated such a change in how case reporting statistics were reported to Congress?

J. <u>Questions Pertaining to Litigation Against the LSC and the Brennan Center</u>

1) The Subcommittee is aware that the Brennan Center, which operates out of New York University Law School, is the driving force behind the U.S. Supreme Court case of *Legal Services Corp., v. Velazquez*, which sought to overturn the 1996 congressional restrictions. In addition, the Brennan Center is now again

seeking to overturn the congressional restrictions by sponsoring the case *Dobbins v. Legal Services Corp.* Can you describe this lawsuit and the remedy it seeks? Please provide to the Subcommittee copies of all pleadings this case. In addition, please advise if there are any other pending court cases involving the restrictions.

2) What is the relationship, if any, of the Brennan Center to the LSC headquarters in Washington? Has the Corporation or any LSC staff member provided assistance to the Brennan Center, or any of its employees, attorneys, or agents, in any case or matter involving the Corporation? Does the Brennan Center participate in any LSC sponsored committees, or other stakeholder groups involved with LSC?

3) Please provide the Subcommittee with a specific accounting of the hours and actual costs to the Corporation to defend the congressional restrictions in *Legal Services Corp. v. Velazquez?*

4) The LSC website lists Board Resolution number 2001-009 as delegating authority to the Chairman of the LSC Board of Directors the power to appoint a Board member to a group called "Friends of the Legal Services Corporation." Please advise the tax classification status of the "Friends of the Legal Services Corporation." Who established this group and what is their explicit purpose? Has any staff of the LSC given support or the promise of future support to this group? What persons and groups comprise the "Friends of the LSC?" What is the relationship of the Corporation to this group? Have any federal funds been spent, in any way, to assist with the establishment of this group? How much money have they provided in the past to the Corporation and how much money are they anticipated to provide in FY 2002?

K. <u>Questions Pertaining to Class Action Lawsuits</u>

1) House Report 106-680, which accompanied the FY2001 LSC appropriations legislation, included the following language: "The Committee also reminds the Corporation that its grantees are prohibited by section 504(a)(7) of P.L. 105-119 from participating in class action suits and directs the Corporation to ensure its grantees comply."

With respect to this very specific congressional directive urging the Corporation to enforce the ban on class actions, please describe specifically what steps were taken by LSC to comply. Was House Report 106-680, and specifically the

language involving the directive on class action lawsuits, ever discussed by the LSC Board of Directors? If so, please provide the date of such discussion and either a transcript, recording or meeting minutes of such discussion.

2) Please provide a listing of any enforcement action taken by the Corporation against any LSC-funded program which initiated or participated in a class action since the restriction took effect in 1996. Please identify the program, the parties to the class action, the court involved, and the case number. Please also summarize what sanctions were imposed on the program involved in the class action. If there were no sanctions imposed, please explain the rationale of LSC for not imposing sanctions for violation of this statutory restriction.

3) Please provide a list of all complaints, from all sources including Members of Congress, concerning LSC-funded programs initiating or participating in class actions and/or representative actions since August 1, 1996. Please provide a list of the complainant, the program involved, the parties to the lawsuit, the court involved, and the case number of the lawsuit. In addition, please provide a summary of both the investigation and final decision of the Corporation.

4) The LSC Inspector General issued Audit Report No. AU 02-01 in October 2001 examining the activities of LSC grantee Lane County Legal Aid Service, Inc. While the emphasis of the report was on the extremely close working relationship between the grantee and the non-restricted program, Lane County Law and Advocacy Center, one of the IG's findings was that the grantee "allowed a full-time attorney to work on a class action suit for the other organization while in the grantee's office." What action has LSC taken to examine the costs associated with the use of a full-time LSC-funded lawyer for a prohibited class action? Has LSC taken any action with respect to the improper legal assistance being rendered by the LSC-funded program in a class action lawsuit?

Please be certain to include any and all written documentation in the possession of the Corporation as it pertains to each question above. The Subcommittee would like receipt of your answers no more than 14 days from the date of this letter. We are sending a copy of this letter by both facsimile and regular mail, in order to insure its receipt and so that you may expedite our request. However, we need questions number ten under the "Questions Regarding Access to Records" section to be provided to us immediately. You may have those answers hand-delivered to the Subcommittee or sent by facsimile.

In addition, please be advised that the Subcommittee specifically reserves the right to request follow up answers and explanations until the Subcommittee determines that every question has been answered to our satisfaction. Of course, any future correspondence made in this regard will be made part of the official hearing record. In addition, please advise the name/job title of the person supplying the answer to each question so that we may contact the appropriate party in the event there is a need for follow up information and/or discussion.

If you have any questions, please do not hesitate to contact Patricia DeMarco, Oversight Counsel, at 202/225-6793. Thank you, in advance, for your kind consideration of our request.

With warm regards, we are,

very truly yours,

BOB BARR
Chairman
Subcommittee on Commercial and Administrative Law

JEFF FLAKE
Vice-Chairman
Subcommittee on Commercial and Administrative Law

BB: pfd

cc: The Honorable F. James Sensenbrenner, Chairman
The Honorable Melvin Watt, Ranking Member

Follow Up Record for the February 28, 2002 Oversight Hearing of LSC

A. Questions Pertaining to the Activities of The Erlenborn Commission

1. During the February 28, 2002 hearing, you testified that the activities of the Erlenborn Commission, as well as the Erlenborn Commission Report, was funded by the LSC? Please advise the total cost, including an itemized list of the expenditures, for both the activities of the Commission and the Report.

Direct expense for the Erlenborn Commission totaled $27,886.26. *See Attachment A.*

2. Was the Erlenborn Commission established pursuant to 45 C.F.R. § 1601.27, as a formally designated subdivision of the Board?

The Erlenborn Commission (Commission) was not established pursuant to 45 C.F.R. § 1601.27 as a formally designated subdivision of the Board. There is currently no, nor has there been for almost a decade, Part 1601 in Title 45 of the *Code of Federal Regulations*. The last version of the CFR to contain a Part 1601 was the 1993 edition, in which Part 1601 was the Bylaws of the Legal Services Corporation. Section 1601.27 was headed "Establishment and Appointment of Committees."

The Sunshine Act requires that, unless specified exemptions apply, meetings of the Board be open to public observation. 5 USC § 552b(b). The question of whether the requirements of the Sunshine Act are applicable in a given instance depends on whether the gathering at issue constitutes a "meeting" for purposes of the Sunshine Act, which specifically defines the term "meeting" as "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business."5 USC § 552b(a)(2).

The LSC Act applies the Sunshine Act's provisions to LSC by providing that "all meetings of the Board, of any executive committee of the Board, and of any [state] advisory council established in connection with this title shall be open and shall be subject to the requirements and provisions of section 552b of title 5, United States Code (relating to open meetings)." Sec. 1004(g) of the LSC Act. However, the Commission clearly did not involve the requisite number of individual agency members (in this case no fewer than 4 member's of LSC's Board of Directors) required to take action on behalf of the agency. It did not involve any "executive committee" of the Board – that is, a subdivision of the Board authorized to act for and bind the Board. It also did not involve an "advisory council," as the LSC Act defines that term in § 1004 (f).

45 CFR Part 1622 is the regulation by which the Government in the Sunshine Act is implemented for LSC. That rule is, by its very terms, limited to the deliberations and decisions of the Board of Directors of LSC, committees of the Board, and state advisory councils. 45 CFR § 1622.1.

The core provisions of Part 1622 are set out at 45 CFR § 1622.3, which provides that every *meeting* of the Board, a committee or council shall be open in its entirety to public observation (except as otherwise provided in § 1622.5); and 45 CFR § 1622.2, which defines *meetings* as the deliberations of a quorum of the Board, or of any committee, or of a council, when such deliberations determine or result in the joint conduct or disposition of Corporation business.

The Erlenborn Commission was none of the three. It was not the Corporation's Board of Directors, not a committee of the Board, and not a state advisory council. The three are defined at 45 CFR § 1622.2, as follows: *Board* means the Board of Directors of the Legal Services Corporation; *Committee* means any formally designated subdivision of the Board established pursuant to the By-Laws of the Corporation; *Council* means a state Advisory Council appointed by a state Governor or the Board pursuant to section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f). *See Attachment A.*

3. Aside from the two public hearings noticed in the Federal Register, was there any debate or deliberations by the Commission, whether by meeting or teleconference held behind closed doors (i.e., not open to the public) and not noticed in the Federal Register, as required by the regulations? If so, please advise the date(s), time(s), and location(s) of such meeting(s).

In addition, 45 C.F.R. § 1622.8 requires "the Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public." In your testimony on February 28, 2002, you advised the Subcommittee you would provide a copy of the transcript from the closed-door deliberations of the Commission. Therefore, as required by the regulations and promised to Congress at the hearing, please provide the transcript of the meeting(s) where the Commission debated, deliberated and reached its interpretive conclusion of the "is" present language of Public Law 104-134 § 504(11). Does the LSC maintain that the LSC's Board discussion leading to the conclusions reached in the Erlenborn Commission Report was a proper topic to be discussed behind closed doors, especially in light of the regulations of the Government in Sunshine Act?

During the hearing, we advised that we would provide transcripts of the public hearings of the Commission. We also repeatedly stated that pursuant to the Government in Sunshine Act, notice was not required. For further explanation, please refer to our response to Question 2.

Transcripts from the two Erlenborn Commission hearings are attached. Both hearings were properly noticed in the federal register and open to the public. The Commission widely publicized and invited a wide-range of interested persons and organizations to provide testimony. For example, Representatives of the Agricultural community were invited and testified before the Commission. *See Attachment A.* There was also an organizational meeting held on February 2, 1999. There is no transcript for that organizational meeting. Further, there is no transcript from the teleconference call that occurred in May of 1999, nor was one required. *See* transcripts from March 27, 1999 and April 10, 1999, attached.

The LSC Board of Directors' discussion regarding the Erlenborn Commission was not discussed behind closed doors but, instead, during the open sessions of the LSC Board meetings, and every Board agenda item for every LSC Board meeting is properly noticed in the Federal Register.

4. From November 16, 1998 until the date the LSC Board changed its alien representation regulation, please list by date every executive closed-door session held by the LSC Board. Did the LSC Board discuss any aspect of the Erlenborn Commission during any of its executive closed door sessions during the period just described? If so, was the discussion topic properly noticed in the Federal Register?

Executive closed door sessions occurred on April 6, 2002; Jan. 18 & 19, 2002; Nov. 17, 2001; Sept. 8, 2001; June 30, 2001; Jan. 26 & 27, 2001; Nov. 10 & 11, 2000; Sept. 18, 2000; June 26, 2000; April 15, 2000; Nov. 19 & 20, 1999; Sept. 18, 1999; June 12, 1999; April 17, 1999; Feb. 21 & 22, 1999; Nov. 16, 1998. The Erlenborn Commission was not discussed during any of the executive closed door sessions. Every Board agenda item for every LSC Board meeting is properly noticed in the Federal Register.

5. In light of the significant impact the Commission's decision has on this nation's agricultural community, why were only members of the academic community chosen to serve on the Commission and not any members of the agricultural community? Please explain to the Committee the Board's reasoning that a commission comprised solely of law professors is a panel capable of a fair interpretation of this regulation?

The Board chose panelists to the Erlenborn Commission viewed as specialists who have distinguished themselves in immigration law. In addition to being highly qualified legal scholars, these individuals are lawyers and professors unaffiliated with LSC.

I would like to highlight that the question before the Commission was the proper interpretation of the law, and not the establishment of policy, hence the use of law professors who are best schooled in statutory construction. The role of the Commission was not to debate or negate the law but, to evaluate and make recommendations as to the proper reading of the clause at issue. We believe that the conclusions of these legal scholars are solidly based on the law, not policy, and that their sound reasoning and legal analysis will withstand the scrutiny of those schooled in statutory construction. Also see Answer to Question 3 concerning members of the agricultural community who testified before the Commission.

6. The word "is," as used in the statutory language in question, limits any legal assistance to an alien who "is present in the United States." Is it a correct statement to find the Commission concluded that legal assistance could be provided to an alien who was ever present in the United States? Please advise the Subcommittee on the Commission's interpretation and definition of the word "is" as used in Public Law 104-134 § 504 (11).

For an alien in one of the unrestricted categories, representation would be authorized so long as the eligible alien is present sufficient to maintain residence or lawful immigration status at the time of the cause of action. With regard to H-2A workers, representation is authorized if the

workers have been admitted to and have been present in the United States pursuant to an H-2A contract, and the representation arises under their H-2A contract.

7. The regulation 45 C.F.R. § 1622.10 states "the Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. §552(b), including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. §522(b), including any costs assessed against the Corporation in such litigation." Please provide the Subcommittee with copies of these reports from 1996 to the present.

See Attachment A.

8. The Subcommittee received testimony about legal services lawyers who were caught on videotape traveling into Mexico in 1999 to solicit clients. The involved North Carolina program was fined $17,000, the cost of the trip, in violation of the statute prohibiting such solicitation. Does LSC permit lawyers funded by LSC to make trips to foreign countries to provide outreach or education? If so, please provide a statement of LSC's policy regarding foreign travel for these purposes. Please describe how LSC monitors its programs for improper foreign travel and describe each and every instance, since 1996, of improper travel by LSC grantees to foreign countries? Do you agree with the statement that solicitation of business in foreign countries, such as Mexico, by LSC funded attorneys is in violation of existing federal statute? If so, what is the Corporation and the Board doing to discourage such actions by its grantees?

Please provide the Subcommittee with actual LSC expenditures on foreign travel by its programs since 1996. Please provide the name of the program, the total amount spent, and the reason for the foreign travel.

Since 1996, how many complaints has the Corporation received involving legal assistance to aliens who were outside the United States at some point during which legal assistance was rendered by an LSC-funded lawyer? Please specifically identify the complainant, the grantee, the case name, and a summary of LSC's actions in each case.

LSC has no policy on foreign travel by LSC funded lawyers. However, all grantees must comply with all LSC regulations and applicable statutes. Particularly relevant to this issue is Part 1630, which defines an *allowed cost* as a questioned cost which the Corporation has determined to be eligible for payment with LSC funds. This definition applies only to costs which either the Corporation or an authorized auditor has questioned during the course of an audit or investigation. Costs are generally *allowable* provided that they meet the nine criteria of §1630.3(a).

Foreign travel is not an area that LSC has asked its recipients to provide reports, therefore we do not have a comprehensive response. Nevertheless, there have been some complaints that have touched on the issue of foreign travel. Provided is a summary of each complaint related to this issue.

LSC Docket Number 98-1-018, complaint filed by Kenneth Boehm of the National Legal and Policy Center ("NLPC") against Farmworker Legal Services of North Carolina ("FLSNC"), a unit of Legal Services of North Carolina. On June 4, 1998, Mr. Boehm sent a complaint, with supporting details, including a videotape of an FLSNC attorney providing legal assistance to individuals in Mexico, to the LSC Office of the Inspector General ("OIG"). The OIG referred this to LSC management, which, on June 16, 1998, began to conduct a review. From July 14-17, an on-site review was conducted. On August 3, 1998, the team report was filed and outlined the finding of substantial violations of the LSC Act and regulations. Based on this, LSC on September 21, 1998, assessed a substantial fine against the program and announced that LSC would no longer permit LSC funds to be awarded to FLSNC as of January 1, 1999.

LSC Docket Number 98-1-040, complaint filed by Kenneth Boehm of the National Legal and Policy Center ("NLPC") against Legal Services of North Carolina ("LSNC"). There was no case filed in this instance, the allegation was that a person purportedly called from Mexico seeking legal assistance, in the form of advice, with respect to an immigration question. Because this complaint involved hearsay information, LSC attempted to go back through the chain of allegations to the originator. Despite several efforts, the originator of the claim did not respond to LSC's requests for information. On the other hand, LSNC provided information showing that it rejected the telephone call as a case. LSC concluded its review with a written letter to the complainant, Mr. Boehm, and the program, dated November 6, 2000, with a finding of "No Violation." For the record, it should be noted that in the original correspondence the caller acknowledged he provided false information and a false identity to the program.

LSC Docket Number 99-1-048, complaint filed by Kenneth Boehm of the NLPC against Legal Services of North Carolina ("LSNC"). There was no case filed in court in this complaint. The program, LSNC provided legal assistance to Mr. Rafael Villela-Ramos. In reviewing this complaint, LSC determined that Mr. Villela-Ramos had been an H2A worker in 1998; however; he was not working as an H2A worker in 1999, at the time of the representation, nor was he present in the United States. LSNC asserted that Mr. Villela-Ramos had been represented by the program in the prior year and its representation in 1999 was pursuant to a claim he could make as a result of the 1998 representation. LSC determined there was no violation of the LSC Act or related authorities. *See Program letter 2000-2, January 24, 2000 - Attachment A.*

LSC Docket Number 99-1-050, complaint filed by Elizabeth Tripses against Legal Aid of Western Missouri ("LAWM"). Ms. Tripses made several allegations regarding the representation of a client, one of which was that the client was not a US citizen. OCE contacted LAWM and requested information. LAWM responded by providing all of the requested information. A review of the information provided by both Ms. Tripses and LAWM revealed that the client was born abroad to a US serviceman; a copy of the client's citizenship attestation was provided.

During the period of January 23 to February 11, 1998, several Farmworker Legal Services of North Carolina ("FLSNC") staff members traveled to Mexico.[1] According to the program, the purposes of the trip were to conduct community education to H2A workers, to meet with existing clients, and to learn about the reality of H2A workers' lives. The important underlying purpose was to increase H2A workers' trust in FLSNC's ability to represent them regarding serious violations of their contractual rights while working as H2A workers in North Carolina.[2] The cost of the trip, not including staff salaries, was $10,573.85.[3] The cost of the salaries for the trip was $6,476.40.[4]

Texas Rural Legal Aid ("TRLA") during the period of January 1, 1999, through November 30, 1999, engaged in the following travel: June 17-23, 1999, Roman Ramos and Alba Morales traveled in Mexico to "re-interview existing clients." October 10-14, 1999, Roman Ramos traveled in Mexico to "interview existing clients." Based on the manner of the TRLA response, there may have been additional travel during this period.

Since 1996, LSC has received seven complaints involving the provision of legal assistance to aliens who were outside the United States at some point during which the legal assistance was rendered by an LSC- funded lawyer. Set forth below are the specifics of each complaint.

---

[1] *See* LSNC June 25, and July 8, 1998 responses, and the LSNC Response to Complaint. The tickets for the travel were purchased on January 5, 1998. LSNC July 8, 1998 Response, Item A-2.

[2] LSNC Response to Complaint Regarding Outreach to H2A workers in Mexico of Farmworkers Legal Services of North Carolina (hereinafter "LSNC Response to Complaint") at 1. (1998).

[3] The travel and related expenses for the Mexico trip were charged to two accounts; 011-62400-140-100 - Contract Services, and 011-63000-140-100 - Community Education: for a total cost of $10,573.85 (not including staff salaries):

*	Ventura Gutierrez	$ 815.12
*	Lori Elmer	1,271.17
*	Alice Tejada	923.78
*	Mary Lee Hall	2,180.21
*	Asencion Faulkner	2,188.00
		$ 7,378.28
*	Airfare for four	1,896.00
*	Other	1,299.57
	TOTAL	$10,573.85

[4] The time of the staff were determined by reviewing the individual Travel Reimbursement Request and the travel itinerary from the travel agency. Only actual working days are being considered, Lori Elmer and Alice Tejada's dates were from January 23, 1998, through February 10, 1998, and Mary Hall's dates were from January 23, 1998, through February 12, 1998. The calculation of the salaries follows:

*	Lori Elmer	(13 days @ 7 hours per day @ $17.53)	$1,595.23
*	Mary Hall	(15 days @ 7 hours per day @ $32.75)	3,438.75
*	Alice Tejada	(13 days @ 7 hours per day @ $18.82)	1,712.62
		TOTAL	$6,746.60

LSC Docket Number 99-1-061, complaint filed by Kenneth Boehm of the NLPC against Texas Rural Legal Aid ("TRLA"). This complaint was reviewed concurrently with the complaint of Dean Kleckner, dicussed below.

LSC Docket Number 99-1-067, complaint filed by Dean Kleckner of the American Farm Bureau ("AFB") against TRLA. Both complainants allege that TRLA is representing three H-2A workers who had not been present in the United States since 1996. Mr. Kleckner also presents an issue regarding the representation of persons in another state. LSC reviewed these complaints and determined there was no violation of the LSC Act or related authorities.

LSC Docket Number 00-1-028, complaint filed by Kenneth Boehm, NLPC, against the Georgia Legal Services Program ("GLSP"). Case Name: Noe Rivera Garay, Efrain Rivera Garay, Salvador Gonzalez, Jose Guadalupe Valdez Reyes, and Ruben Aviña Yañez v. Southern Valley Fruit and Vegetable, Inc. Hamilton Growers, Inc. Georgia Growers Association, Inc., and Kent Hamilton. Mr. Boehm raised concerns that GLSP was improperly representing five H2A workers who were not present in the United States at the time of the representation. LSC conducted a review and determined there was no violation of the LSC Act or related authorities.

The complaint filed against Farmworker Legal Services of North Carolina ("FLSNC") was filed by Kenneth Boehm of the National Legal and Policy Center ("NLPC"). As noted above, LSC found serious and substantial violations, including a pervasive failure to comply with basic client screening: (a) income screening (b) asset screening, (c) alien eligibility screening, and to a lesser extent, (d) the execution of retainer agreements. LSC also found FLSNC had provided legal assistance to 26 individuals who were not present in the U.S. at any time during the tendency of the case. As a result, FLSNC no longer receives LSC funding.

9. The Subcommittee has received information involving activities of one of the Georgia legal services groups and request you please provide further clarification to us. An LSC-funded attorney has filed suit against G&R Farms, a Georgia Vidalia Onion producer, on behalf of forty workers who planted onions for G&R in 1999. In 1999, an LSC-funded attorney visited the labor camp and had forty workers sign up to have this attorney represent them. When the statute of limitations was about to expire in November of 2001, the LSC grantee filed suit in order to toll the statute. Apparently, only one of the forty workers can now be found and he is an illegal alien. Of course, the Erlenborn Commission's interpretation of the alien representation provision appears to "open the door" and allow the LSC-funded attorneys to search in Mexico for these illegal aliens and provide them with representation. However, it is believed all of these workers are ineligible for representation due to their illegal immigration status. Does the Corporation believe, based on the Erlenborn Commission's findings, these illegal aliens are now eligible for representation?

Please provide the Subcommittee with a complete, detailed explanation of the litigation methods of this LSC-funded attorney. Of particular interest to the Subcommittee is the allegation these workers are receiving representation prior to any claim of harm or injury. Does the Corporation support such actions by LSC-funded attorneys?

The Subcommittee is quite concerned about this report and is requesting a complete and full investigation of all the facts and circumstances of the representation of these forty workers. In addition, please provide us with copies of all discovery and court documents, including the original Complaint.

G&R Farms is one of the four defendants doing business as Dasher Harvesting in the pending case, Alvarez-Lopez et. al. v. Robert Dasher, et. al., CV 601-128 (S.D. Ga. Nov. 13, 2001). GLSP represents 40 plaintiffs who were H-2A workers for Dasher Harvesting from November 1999 until early January 2000. All plaintiffs in this case worked as legal H-2A workers and filed suit for claims arising directly under their H-2A contract work while employed in the United States. Thus, they meet the eligibility requirement formulated by the Erlenborn Commission and adopted by the LSC Board, requiring H-2A workers to be present in the country at the time of their cause of action to be eligible for LSC-funded assistance. It is not true that "only one of the forty workers can now be found, and he is an illegal alien." During the deposition, GLSP offered the testimony of several plaintiffs currently residing in the United States. Other plaintiffs have since returned to Mexico. *See Attachment A* for copies of all requested documents.

In November 1999, several Dasher Harvesting employees sought legal assistance from GLSP, claiming they had not been paid their promised wages. As part of her investigation into this case, GLSP attorney Nan Schivone wrote grower Robert Dasher in August 2001 requesting records under 20 C.F.R. 655.102(b)(f), so that she could further evaluate her clients' claims. The standard practice of GLSP's Farmworker Division is to investigate assertions of eligible clients, research potential legal claims, obtain and review documents from sources including the grower, and assess the merits of the potential claims prior to deciding on any strategy, such as whether to file litigation. Ms Schivone began discussions with Dasher's counsel in September 2001 about obtaining pertinent records to assess the nature of her clients' claims and determine the appropriate course of action. She followed up the discussion with several letters, including a detailed letter dated October 25, 2001, that mentioned the possibility of settling the claim. Dasher's counsel did not turn over the records until November 2, 2001, shortly before the expiration of the statute of limitations.

Upon receiving the records, GLSP attorneys determined that there indeed had been wage violations and made another settlement offer on November 7, 2001. Dasher's counsel did not respond to the offer but did agree to a one-week extension of the statute of limitations. Ms. Schivone heard nothing regarding the settlement proposal in the ensuing week, so she filed suit on November 13, 2001. Since that time, GLSP has demonstrated a continued willingness to discuss a settlement, but no agreement has been reached.

B. Questions Pertaining to the LSC Inspector General's Office and Functions

1. LSC Inspector General Edward Quatrevaux wrote a letter to U.S. Representative Harold Rogers, Chairman of the House Appropriations Subcommittee, on September 14, 2000. This letter was discussed at the February 28, 2002, hearing of the Subcommittee and is posted on the web page of the LSC Inspector General (IG). The LSC IG's letter states that grantees had repeatedly denied the IG access to information and the LSC President and Board of Directors had "undermined the OIG by encouraging grantees to refuse to provide information to the OIG." Please identify the following: the information the IG requested, the LSC programs that refused the IG the requested information, and the reason given by the LSC programs to support its denials.

The following answer was provided by the Office of Inspector General: In his September 14, 2000 letter to Representative Rogers, former LSC Inspector General Edward Quatrevaux stated: "Grant recipients have repeatedly denied the Office of Inspector General (OIG) access to information. Moreover, the actions of the LSC President and Board of Directors have undermined the OIG by encouraging grantees to refuse to provide information to the OIG."

The denials of access to information to which Mr. Quatrevaux referred are as follows:

In May 1999, during an audit of the 1998 case statistical reports of Legal Aid Bureau of Maryland, the grantee denied the OIG access to information requested in order to verify the type of cases handled and, for certain referred cases, information necessary to explain the nature of services provided to clients. This denial of access to needed records precluded the OIG from completing the audit as planned. The grantee based its denial on the attorney-client privilege and state rules of professional responsibility. The OIG issued a report covering only the audit work completed at the grantee's Baltimore office. The report stated that the grantee overstated closed cases by 43.5 percent and open cases by 43 percent.

In March 2000, during the OIG's performance of the congressionally mandated assessment of 1999 case statistical data, two grantees, the Legal Aid Bureau of Maryland and Legal Services for New York City, denied the OIG access to information needed to complete the assessment. Specifically, based on a blanket assertion of attorney-client privilege and state rules of professional responsibility, the grantees denied access to client names. The grantees claimed that because they had provided the client's legal problem code, which is a description of the nature of a client's case, providing to the OIG the client's name would allow the OIG to link the name to the problem code. This, the grantees claimed, would violate the attorney-client privilege and the grantees' professional ethics. LSC management initiated proceedings to suspend funding to each of the grantees. This action was deferred when the matter was litigated. The OIG subpoenaed the information and, when the grantees refused to comply with the subpoena, filed for enforcement in Federal court. This is discussed more fully in response to question B3.

In June 2000, the two LSC grantees in Georgia, the Atlanta Legal Aid Society and the Georgia Legal Services Program, denied the OIG access to information requested in connection with an OIG evaluation of service delivery by using geographic systems in

operational and strategic planning. Specifically, citing the attorney-client privilege and state rules of professional responsibility, the grantees denied access to twelve data elements, including such items as client name, client address, case number, problem category, and closure code. The grantees also questioned the OIG's statutory authority to conduct the evaluation. The OIG subpoenaed the information and when the grantees refused to comply with the subpoena, filed for enforcement in Federal district court. Since that time, the OIG and the grantees have settled the matter and the evaluation project is going forward. In reaching the settlement the OIG modified its original data request. About half the originally requested data contained significant errors that limited its usefulness for evaluation purposes. Some of the data originally requested was collected by the grantees in the early 1990s and was unreliable. The OIG decided that the evaluation was best served by using data collected beginning in 1996 and running through 2000. This data is significantly more accurate will make the evaluation analysis more reliable.

2. In the same letter of September 14, 2000, the IG went on to state "LSC management has also accepted denials of access to records when attempting to conduct its own compliance inspections, and acceded to ineffective inspection procedures suggested by grantees being inspected." Please identify each and every LSC program that has denied the Corporation access to documents since the 1996 reforms took effect. Your answer should include the following information: the name of the LSC program, the type of document(s) sought, the date of the refusal, the reason given to refuse access to the requested records, and whether the LSC ultimately obtained access to the information in question.

In several instances, recipients have worked with LSC on full disclosure of 509(h) information - client name, eligibility records, retainer agreements - when linked to information concerning the nature of the client's case and/or the nature of the legal assistance provided to the client by the recipient, which could implicate attorney-client privilege and/or rules of professional responsibility. Those instances include: Legal Aid Bureau ("LAB"), Legal Aid of Western Missouri ("LAWMO"), Westchester/Putnam Legal Services ("WPLS"), Legal Aid of Metropolitan Chicago ("LAFMC") and Legal Aid for Broome and Chenango ("LABC"). In each such instance, LSC was permitted to view the client name, eligibility records, and retainer agreements. In those cases involving disclosure to unprivileged parties, LSC was also permitted to view pleadings, court orders and other documentation evidencing the nature of the client's legal problem and the nature of the legal assistance provided. Otherwise, recipient staff discussed with LSC the general nature of the client's case and the general nature of the legal assistance provided.

Although OIG characterized the LAB's response to its request for access as a denial, ultimately, LAB agreed to the foregoing full disclosures. Additionally, LAWMO initially refused to provide LSC access to signed retainer agreements, citizenship/alien eligibility documentation, and financial eligibility documentation in conjunction with other information that raised concerns about confidentiality. After some discussion between LAWMO and LSC, LAWMO abandoned this position.

Legal Services of North Florida and Withlacoochee Legal Services have advised LSC that the Florida rules of ethics treat as confidential public records and descriptions of legal services.

Legal Services of Maumee Valley in Indiana, no longer an LSC recipient refused OCE certain documents similar to those mentioned above. This program merged with the new state-wide legal services program for Indiana and, as a result OCE review of this matter was concluded.

Middlesex County Legal Services Corporation has advised LSC that based on a New Jersey Supreme Court advisory opinion the program may not disclose client identities to LSC where these identities when they are connected to information related to the clients problem.

3. The LSC IG's September 14, 2000 letter also described an instance in which two grantees refused to comply with IG subpoenas and he sought enforcement with the U.S. District Court. The Court ordered enforcement, but one grantee appealed and the matter was pending at the time the IG wrote his letter. Identify the LSC program which refused to comply with the subpoena and describe the outcome of the appeal.

The following answer was provided by the OIG: In his September 14, 2000 letter to Representative Rogers, former LSC Inspector General Edward Quatrevaux described a situation in which the IG sought enforcement in Federal District Court of subpoenas issued to two grantees. As stated in that letter:

> In response to OIG audit reports of significant inaccuracies in the case statistical information provided to LSC, Congress directed the OIG to "assess the case service information provided by the grantees, and report to the Committees no later than July 30, 2000, as to its accuracy." Although neither the attorney-client privilege nor local rules of professional responsibility applied to the data to be collected, the OIG devised a data collection process to alleviate concerns that the linkage of client name and legal problem code was subject to the attorney-client privilege. The system was similar to a so-called "Chinese wall" used in law firms.
>
> Two grantees nevertheless refused to provide the requested information. When the grantees refused to comply with IG subpoenas, the OIG sought enforcement in U.S. District Court. The grantees asserted that "unique identifiers" could be used in lieu of client names. The OIG evaluated the proposals and concluded that implementation of "unique identifiers" could only be checked by gaining access to the very data that "unique identifiers" were designed to conceal. Without that check, the OIG would be forced to accept an assertion that the "unique identifiers" were properly applied. Therefore, the OIG would be forced to accept the grantee's assertion as confirmation of the assertion that the case statistical data was accurate. The Court ordered enforcement, but one grantee appealed and the matter is pending.

The two grantees are Legal Aid Bureau of Maryland (LAB) and Legal Services for New York City (LSNY). Fifty-eight grantees provided the requested information. In the subpoena enforcement action filed in the U.S. District Court for the District of Columbia, enforcement was upheld. LAB complied with the court's order, providing the subpoenaed data to the OIG. LSNY

appealed the case to the D.C. Circuit, which affirmed the District Court's decision. Because the court rejected LSNY's blanket claims of privilege but did not foreclose the possibility that LSNY could raise specific claims of privilege in particular cases, the D.C. Circuit remanded the matter to the District Court for further proceedings. The District Court appointed a Special Master to hear any such particular privilege claims.

At this time, LSNY has provided data for all but 25 of the cases handled by LSNY and LSNY's subgrantees, with the exception of two of its subgrantees. The 6,111 cases handled by those two LSNY subgrantees are the subject of a related case pending in the U.S. District Court for the Southern District of New York.

This second case was filed by LSNY subgrantees, Bronx Legal Services and Queens Legal Services, against the OIG (which had subpoenaed the data), LSC (which had initiated proceedings to suspend funding to LSNY) and LSNY. The subgrantees are asking for declaratory and injunctive relief. The subgrantees argue that, under their subgrant agreements with LSNY, they are not required to provide the data requested by the OIG. The subgrantees have requested a preliminary injunction against LSNY, asking the court to enjoin LSNY from suspending or terminating their subgrant funding for their failure to provide the information sought by the OIG.

Shortly after the case was filed, the OIG moved the court for a change of venue to the D.C. District Court and to join this case with the subpoena enforcement action pending in the D.C. Circuit. That motion was denied. Thus, final resolution of the OIG's subpoena enforcement action in the D.C. District Court must await the outcome in the subgrantees' case pending in the Southern District of New York. Motions for summary judgment have been filed and a hearing was held in March 2002. No decision has been reached on these motions.

4. Shortly after the LSC IG's September 14, 2000 letter to Representative Rogers accusing LSC's President and Board of Directors of undermining the IG by encouraging grantees to refuse to provide information to the IG, it was announced that the IG was no longer employed by LSC. As asked at the Subcommittee's hearing, was the IG terminated or pressured to resign by the Corporation or the LSC Board? Please explain for the Subcommittee the circumstances under which IG Quatrevaux left his position at the Corporation.

Please provide complete transcripts from all LSC Board meetings held from August 2000 through January 2001. In particular, the Subcommittee is interested in all discussions that involve access to records by the OIG, the OIG's letter to Congress, and the circumstances surrounding the termination of IG Quatrevaux.

IG Edward Quatrevaux announced his resignation to the LSC Board of Directors on Saturday, November 11, 2000, at the Board Meeting held in Washington, D.C. At that meeting, the Board of Directors voted to accept this resignation as LSC's Inspector General. The resignation was effective December 1, 2000.

At the November 2000 Board meeting, Mr. Quatrevaux stated, "I would simply, today, like to announce my retirement to launch a new [business] venture." As the attached Board meeting

transcript states, Mr. Quatrevaux left "very proud of the accomplishments of the office of the inspector general over the last nine years." He further stated, "I am looking forward eagerly to the future. Our [business] venture, which is known as, 'The Level Playing Field' aims to make a college degree affordable to everyone, regardless of income. We've acquired control of an accredited college, and hope to begin online delivery of our programs next year." *See Attachment B.*

5. The LSC IG's September 14, 2000 letter refers to an instance in December 1999 when LSC management entered into a written agreement with Westchester/Putnam Legal Services to accept "unique identifiers" in place of having access to client names. At the same time this grantee, Westchester/Putnam Legal Services, was the subject of a complaint filed with the Corporation which discussed the allegations of John Hand, an LSC attorney for 20 years, who wrote a letter to the editor of Investor's Business Daily claiming the grantee had engaged in unethical practices. Mr. Hand's letter stated, "One of the practices was the counting of virtually every telephone call as a "case" in order to build up numbers to report to the LSC and other funders. Consequently, hundreds, if not thousands, of reported cases were nothing more than referrals or other responses given by paralegals or secretaries." LSC dismissed this complaint.

In 1997 Congress decided that access to certain information, such as individual client names, was so important the LSC Act was specifically amended by Public Law 105-119 § 505(b)(1), which provides specific access to this type of information. Why did LSC waive this specific statutory authority, designated to it by Congress, and enter into this written agreement with Westchester/Putnam Legal Services? How exactly does the Corporation contemplate it can accurately determine if the grantees cases are both client eligible and not violating the congressional restrictions, without client names?

How was the complaint of Mr. Hand handled by the Corporation? Was a complete investigation ever done? If so, what specific evidence was collected to support or deny the allegations? If not, why was such a serious allegation not fully investigated? Please advise the reason LSC dismissed the complaint against Westchester/Putnam Legal Services and what specific corrective actions, if any, were taken against this grantee.

By letter dated September 24, 1999, the National Legal and Policy Center (NLPC) complained that Westchester Putnam Legal Services (WPLS) engaged in a practice of falsifying the case statistical data provided to LSC and other funding sources. According to NLPC, WSLP routinely reported telephone calls to non-lawyers as cases in its case service reports. NLPC stated that these allegations were revealed in a June 18, 1999 letter to the editor of *Investor's Business Daily*. The letter was written by John T. Hand, who resigned from WPLS after 20 years of service. Mr. Hand wrote that the purpose of the practice was to inflate the numbers reported to LSC. He wrote that hundreds, if not thousands, of reported cases were nothing more than referrals or other responses by paralegals or secretaries.

NLPC argued that such practice violated the Act, regulations and grant assurances. Additionally, NLPC argued that the callers were not properly screened for eligibility, and that the practice operated to dissuade others from competing for the LSC grant, in violation of fair and open competition requirements.

In response to the complaint, LSC reviewed available information concerning both WPLS and Mr. Hand. LSC confirmed that Mr. Hand began working for WPLS in March 1968 and served as its litigation director. LSC also reviewed WPLS' grant activity reports in an effort to determine any anomalies. Additionally, LSC contacted NLPC for any further information and advised WLPS of its intent to conduct an on-site review.

From February 14 - 18, 2000, LSC assessed the allegations contained in the complaint. In so doing, LSC (1) reviewed program policies relative to intake, case acceptance, case management and case closing, in all substantive units and offices for 1996 and 1997; (2) assessed program practices relative to such policies involving intake, case acceptance, case management and case closing by identifying and interviewing intake staff and personnel responsible for case acceptance; (3) reviewed program policies regarding CSR reporting; and (4) assessed program practices relative to CSR reporting by identifying and interviewing intake and legal staff in each office and unit to determine how case closure categories are applied. As well, LSC reviewed 667 randomly selected 1996 and 1997 files. These files were reviewed to determine whether clients were screened for eligibility consistent with Parts 1611 and 1626, and to determine whether, consistent with 45 CFR 1620.2(a), a WPLS attorney or paralegal provided legal services.

LSC determined that program policies and practices were consistent with the LSC Act and regulations. Applicants for legal assistance were screened for financial eligibility by intake paralegals, who are supervised by staff attorneys. Case acceptance decisions were made by staff attorneys, consistent with program priorities, the LSC Act and regulations. Intake paralegals were, however, authorized to decline assistance in matters inconsistent with priorities, the Act and regulations.

However, LSC did determine that WPLS' use of CSR case closure category "K" ("Other") was improper. Instances in which WPLS declined assistance or the applicant is over-income had been closed as "K" and included in WPLS CSR data. Additionally, LSC found, 90 files that lacked evidence of financial eligibility screening; 152 files that lacked Part 1626 documentation; and 54 files in which no legal assistance was provided. LSC's determinations were contained both in a report to WPLS and a letter to NLPC.

WPLS explained that once intake information was entered into the computer management system, a file number was assigned and a closing code needed to be entered in order to exit the program. WPLS chose to use CSR case closure category "K" as a CSR exclude code. LSC noted that in 1996 WPLS reported 578 cases closed using "K" in 1996, 47 in 1997, and 166 in 1998. WPLS recognized the problem and has been working to identify an alternative code that will close the file number and signal the file for exclusion from the grant activity report. In 1999, WPLS reported 27 cases closed using CSR case closure category K.

OCE made the following recommendations to WPLS:

1. ensure that all cases reported in its Grant Activity Report involve a named, eligible client with a specific legal problem, accepted and assisted by WPLS.
2. ensure that its computerized intake system is correctly calculating income eligibility.
3. ensure compliance with program policies regarding income and asset waivers.

4. provide instruction to all persons responsible for, or involved in, intake regarding the necessity of citizenship/alien eligibility screening and/or documentation at the time of intake.
5. institute measures to document, or otherwise distinguish, telephone only contacts.
6. ensure appropriate Part 1626 documentation in all cases involving continuous representation, regardless of the manner in which contact occurs.
7. document, in the case files, the assistance provided, particularly in case closed following counsel and advice or brief service.
8. review intake information to ensure proper income and asset determinations, the presence of retainer agreements, and Part 1626 documentation.
9. conduct a periodic file review to ensure timely closings, proper application of CSR case closure categories.
10. review CSR data prior to submission to purge both duplication and files in which assistance was not provided, and to ensure accurate reporting of the level of service provided.

Following the on-site visit, LSC contacted Mr. Hand and asked him to provide additional information. Mr. Hand, through his attorneys, declined. The complaint was closed on January 29, 2001.

6) The LSC IG's letter of September 14, 2000 concluded, "LSC management has demonstrated that it does not intend to use the authority granted by the appropriations statute. The compliance inspection procedures it adopted at the suggestion of grantees are ineffective." Are the compliance inspection procedures adopted by LSC at the suggestion of the grantees still in place? Please describe those procedures in detail.

See Answer to question B7.

7) The LSC IG's letter also charged, "In September 1999, LSC management attempted to conduct a compliance review of Legal Aid of Western Missouri, but was refused access to client names and eligibility data (e.g., income, assets, citizenship). After ten months of negotiation, in July of 2000 LSC management agreed to accept unique identifiers in lieu of client names. This occurred after a court decision confirmed LSC's statutory access and while some OIG court actions on the access issue were pending."

Again, why did LSC agree to accept "unique identifiers" instead of client names when it has the specific legal authority to obtain client names? Who made the decision to accept "unique identifiers" instead of client names? Was this decision approved by the LSC Board and, if so, when? Does LSC disagree with the court, which decided that it has statutory authority to request client names, in cases such as this? Does LSC continue to request client names from other programs, in cases like Legal Aid of Western Missouri, or does LSC continue to waive access to this important information?

In regard to the agreement with Legal Aid of Western Missouri concerning access to records, LSC determined it was in LSC's best interest to agree to this arrangement in order to review the necessary information to most effectively conclude its investigation. The unique identifiers

involved access to non-509(h) information due to confidentiality or privilege concerns. This decision created no legal precedent, nor did it waive LSC's legislative authority to similar records in future investigations or site visits. In addition it did not impact the OIG's legislative authority to seek and review documents from LSC grantees. By letter dated July 26, 2000, LSC confirmed with Legal Aid of Western Missouri the procedure and compromise reached concerning the onsite compliance review. *See Attachment B.*

At the November 1999 meeting, the Board passed a resolution expressing its explicit support for access to records needed by the IG and LSC Management. However, the Board does not support amending the law to provide access to communications and information that have been historically protected by the attorney-client privilege. Current law provides that time records, eligibility records, client names, and retainer agreements "shall be made available" to any federal department or agency monitoring or auditing the activities of LSC or a recipient, except for such records or reports that are subject to the attorney-client privilege. The LSC Board strongly feels that the current law properly balances the need for information by auditors and other monitors with the well-established jurisprudence embodied in the attorney-client privilege.

C. Questions Regarding Access to Records

1) We would like clarification regarding the Corporation's interpretation of 45 C.F.R. § 1622 entitled "Public Access to Meetings Under the Government in the Sunshine Act." Section 1622.3 provides that "Every meeting of the Board or a council shall be open in its entirety to public observation except as otherwise provided in § 1622.5." Do you agree with this regulation and can you advise this Subcommittee whether the Board has been in full compliance with this regulation in the past two years?

LSC has been in full compliance with this regulation.

2) The regulations go on to state in § 1622.8 that "The Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public." Do you agree with this regulation and can you advise this Subcommittee whether the Board has been in full compliance with this regulation in the past two years? Critics of LSC charge that the Board meeting minutes are revised past their actual meaning. If this is true, the Board is not in compliance with the regulations. Can you please address this criticism and inform this Subcommittee as to the accuracy of the records of meetings of the Board and the Corporation.

The LSC Board of Directors may properly correct draft Board meeting minutes in order to ensure that they accurately reflect the official record of the meeting. The minutes are prepared from verbatim transcripts and then reviewed and adopted by the Board. Minutes cannot and do not provide for anything that did not occur and that is not reflected in the transcript.

3) Please advise the Subcommittee how the Board and Corporation reaches its decision making process in the following areas: promulgating federal regulations; remedial action with regard to grantees, and adoption of general policies of the Corporation.

Remedial actions by LSC can take many forms including termination or debarment pursuant to Part 1606, suspensions pursuant to Part 1623, disallowed costs for improper expenditures pursuant to Part 1630, special grant conditions at the beginning of a grant cycle after competition, and month-to-month or other short term funding at the beginning of a grant cycle. Additionally, concerns about recipient performance and compliance are factors in the competition process and in state planning. General policies of LSC are adopted by management and/or the Board of Directors pursuant to the LSC statutes, bylaws and regulations. And see answer to question E3.

4) Please provide the Subcommittee with a schedule of the upcoming on-site monitoring visits. This request does not refer to technical visits, but rather to scheduled compliance visits.

Please describe the compliance monitoring cycle of LSC recipients and the scope of a typical compliance visit. Please advise the current number of LSC recipients and how often each LSC recipient is visited by an LSC monitoring team. Has every program been visited by a compliance monitoring team in the past three years? If not, why not?

Please provide the Subcommittee with a list of all programs that have not received an on-site LSC compliance review in three years or more, and indicate the number of years that the program has gone without a review.

As a matter of background, the OCE schedules two to three months in advance and has to make ongoing room for adjustment due to complaints which may need quicker attention. With this said, there may be trips scheduled many months in advance due to rescheduling considerations, as the original dates selected were not possible.

The current budget of OCE allows for three trips per month. This total will include either compliance or technical assistance visits. It should be noted that technical assistance visits are conducted in such a manner that they have a significant impact on bringing programs into compliance or ensuring compliance with the law. However, as instructed, only full compliance visits are included in this list. At present the following compliance trips are scheduled:

May 2002

Middlesex County Legal Services Corporation

Niagara County Legal Aid Society

June 2002

South Mississippi Legal Services Corporation

(A second compliance trip is to be scheduled; A third technical assistance trip has also been scheduled in this month.)

Northern Kentucky Legal Aid Society, Inc.

July 2002

Western Ohio Legal Services Association

Legal Services of Northern California

(A third trip will be scheduled)

There is no formal monitoring cycle. Programs are selected for review for Case Service Report/Case Management System (CSR/CMS) systems based on specific indicators that indicate a review is warranted. Further, programs receive on-site complaint investigations where allegations warrant such on-site review.

LSC management received instructions from Congress contained in the FY2001 Appropriations to hire seven investigators for the Office of Compliance and Enforcement (OCE). LSC management presented a budget proposal for FY2001 to allow LSC to conduct at least 30 on-site visits or investigations in a given calendar year. These on-site reviews/investigations would include CSR/CMS reviews, technical assistance reviews that usually address CSR/CMS issues, complaint investigations and accountability trainings. In 2001, LSC conducted 32 on-site

reviews, consisting of 21 CSR/CMS reviews, 5 complaint investigations, 3 technical assistance reviews, and 3 accountability trainings.

By Congressional mandate since FY1996, all LSC programs receive a regulatory review on a yearly basis conducted by the program's Independent Public Accountant (IPA), as part of the program's annual audit of financial statements. All LSC programs are reviewed for certain regulations by the IPAs on an annual basis. LSC's OCE conducts complaint investigations, CSR/CMS reviews, technical assistance reviews, and accountability trainings. As part of the CSR/CMS reviews, LSC generally assesses compliance with the following: 45 C.F.R. Parts 1611, 1614, 1620, 1626, 1630, 1636, 1642, 1644, intake, case management, and the CSR Handbook. However, if in the course of any on-site review, information comes to light that indicates problems with compliance with any relevant LSC law or regulations, then a full inquiry is made into those areas.

Attached is a list of the programs visited by LSC from January 1998 to the present. Because of mergers and consolidations of LSC programs, it is difficult to provide a comprehensive list of programs that have not received a CSR/CMS review in the last three years. When mergers have resulted in the creation of a new entity, of which a part was reviewed by LSC, the new entity is being included on this list as "not reviewed," as LSC has not reviewed the full program (new program). See also Answer to Question C5.

The following programs have not received an on-site review by OCE for at least the past 3 years:

ALABAMA

Legal Services Corporation of Alabama, Inc. – not in 8 years

ALASKA

Alaska Legal Services Corporation – not in 8 years

ARIZONA

Community Legal Services, Inc.
DNA –Peoples Legal Services, Inc.

ARKANSAS

Legal Aid of Arkansas, Inc.
Center for Arkansas Legal Services

CALIFORNIA

California Indian Legal Services, Inc.
Greater Bakersfield Legal Assistance, Inc.
Neighborhood Legal Services of Los Angeles County

Legal Services of Northern California
California Rural Legal Assistance, Inc.
Bay Area Legal Aid
Legal Aid Society of Orange County, Inc.

COLORADO

Colorado Legal Services.

DISTRICT OF COLUMBIA

Neighborhood Legal Services Program

FLORIDA

Central Florida Legal Services, Inc.
Legal Aid Services of Broward County
Jacksonville Area Legal Aid, Inc.
Legal Services of Greater Miami, Inc,
Legal Services of North Florida, Inc.
Bay Area Legal Services, Inc.
Three Rivers Legal Services, Inc.
Northwest Florida Legal Services, Inc.
Gulfcoast Legal Services, Inc.

GEORGIA

Atlanta Legal Aid Society, Inc.
Georgia Legal Services Program

GUAM
Guam Legal Services Corporation

HAWAII

Native Hawaiian Legal Services Corporation
Legal Aid Society of Hawaii

IDAHO

Idaho Legal Aid Services, Inc.

ILLINOIS

Land of Lincoln Legal Assistance Foundation, Inc.
Prairie State Legal Services, Inc.

INDIANA

Indiana Legal Services, Inc.

IOWA

Legal Services Corporation of Iowa
Legal Aid Society of Polk County

KENTUCKY

Northern Kentucky Legal Aid Society, Inc.
Appalachian Research and Defense Fund of Kentucky
Cumberland Trace Legal Services, Inc.

LOUISIANA

Capital Area Legal Services Corporation
New Orleans Legal Assistance Corporation
Acadiana Legal Services Corporation
Southeast Louisiana Legal Services Corporation

MAINE

Pine Tree Legal Assistance, Inc.

MARYLAND

Legal Aid Bureau, Inc.

MASSACHUSETTS

Volunteer Lawyers Project of the Boston Bar Association
South Middlesex Legal Services, Inc.
Merrimack Valley Legal Services, Inc.
Massachusetts Justice Project, Inc.

MICHIGAN

Legal Services of Eastern Michigan
Lakeshore Legal Aid
Oakland Livingston Legal Aid
Legal Services of Northern Michigan, Inc.
Michigan Indian Legal Services, Inc.

MICRONESIA

Micronesian Legal Services, Inc.

MINNESOTA

Legal Aid Service of Northeastern Minnesota
Judicare of Anoka County, Inc.
Legal Services of Northwest Minnesota Corporation
Southern Minnesota Regional Legal Services, Inc.

MISSISSIPPI

Central Southwest Mississippi Legal Services Corporation
North Mississippi Rural Legal Services, Inc.
South Mississippi Legal Services Corporation
Southeast Mississippi Legal Services Corporation

MISSOURI

Legal Services of Eastern Missouri, Inc.
Mid-Missouri Legal Services Corporation
Legal Services of Southern Missouri

MONTANA

Montana Legal Services Association

NEBRASKA

Nebraska Legal Services

NEW HAMPSHIRE

Legal Advice & Referral Center, Inc.

NEW JERSEY

Cape-Atlantic Legal Services, Inc.
Warren County Legal Services, Inc.
Camden Regional Legal Services, Inc.
Union County Legal Services Corporation
Hunterdon County Legal Services Corporation
Bergen County Legal Services
Hudson County Legal Services Corporation
Middlesex County Legal Services Corporation
Passaic County Legal Aid Society
Somerset-Sussex Legal Services Corporation

Legal Aid Society of Mercer County
Legal Aid Society of Morris County

NEW MEXICO.

Southern New Mexico Legal Services, Inc.

NEW YORK

Legal Aid Society of Northeastern New York, Inc.
Neighborhood Legal Services, Inc.
Chemung County Neighborhood Legal Services, Inc
Nassau/Suffolk Law Services Committee, Inc.
Legal Aid Society of Rockland County, Inc.
Legal Services for New York City
Niagara County Legal Aid Society, Inc.
Monroe County Legal Assistance Corporation
Legal Services of Central New York, Inc.
Legal Aid Society of Mid-New York, Inc.
North Country Legal Services, Inc.
Southern Tier Legal Services

NORTH CAROLINA

Legal Services of Southern Piedmont, Inc.
North Central Legal Assistance Program, Inc.
Legal Aid Society of Northwest North Carolina, Inc.

NORTH DAKOTA

North Dakota Legal Services, Inc.

OHIO

Community Legal Aid Services, Inc.
Legal Aid Society of Greater Cincinnati
The Legal Aid Society of Cleveland
Ohio State Legal Services
Western Ohio Legal Services Association
Legal Services of Northwest Ohio, Inc.

OKLAHOMA

Oklahoma Indian legal Services, Inc.
Legal Aid Services of Oklahoma

OREGON

Legal Services of Oregon
Lane County Legal Aid Services, Inc.
Marion-Polk Legal Aid Services, Inc.

PENNSYLVANIA

Laurel Legal Services, Inc.
North Penn Legal Services, Inc.
Southwestern Pennsylvania Legal Services, Inc.
Northwestern Legal Services
Legal Aid of Southeastern Pennsylvania

PUERTO RICO

Community Law Office, Inc.

SOUTH CAROLINA

The South Carolina Centers for Equal Justice

SOUTH DAKOTA

East River Legal Services

TENNESSEE

Legal Aid of East Tennessee
Memphis Area Legal Services, Inc.
Legal Aid Society of Middle Tennessee and the Cumberlands
West Tennessee Legal Services, Inc.

TEXAS

West Texas Legal Services, Inc.
Lone Star Legal Aid
Texas Rural Legal Aid, Inc.

VERMONT

Legal Services Law Line of Vermont, Inc.

VIRGINIA

Southwest Virginia Legal Aid Society, Inc.

Legal Services of Eastern Virginia, Inc.
Blue Ridge Legal Services, Inc.
Potomac Legal Aid Society, Inc.

WASHINGTON

Northwest Justice Project

WEST VIRGINIA

Legal Aid of West Virginia, Inc.

WISCONSIN

Legal Action of Wisconsin, Inc.
Wisconsin Judicare, Inc.
Legal Services of Northeastern Wisconsin, Inc.
Western Wisconsin Legal Services, Inc.

WYOMING

Wyoming Legal Services, Inc.

5) How can LSC ensure this Subcommittee and the taxpayers that the restrictions of the LSC Act, regulations, and annual appropriations riders, are complied with if on-site monitoring is not a routine part of the Corporation's oversight? Does LSC management rely on the year-end audits as a substitute for periodic oversight and on-site monitoring visits to grantees by LSC staff? How many on-site visits have been made annually from 1991 through 2001 to LSC programs by LSC staff for compliance or oversight purposes?

In recent years, LSC management, working with the independent LSC Inspector General, has developed a system of effective oversight for federally funded legal aid grantees. LSC has taken aggressive action to ensure compliance within applicable Federal law and regulations. Charged with this specific responsibility, LSC's Office of Compliance and Enforcement (OCE) has 12 attorneys on staff, three fiscal professionals, and one management professional. With approximately $2.2 million in budgeted funds for FY 2002, OCE investigates complaints and inquiries from members of Congress and the public, and follows up on referrals from LSC's Office of the Inspector General regarding possible violations discovered through compliance audits of local programs. The office also develops and enforces corrective action plans and recommends and enforces sanctions where necessary.

Under the LSC system a principal mechanism for ensuring compliance is through each local program's financial statement audit, which includes a mandatory audit of compliance with LSC regulations. These audits are conducted by Independent Public Accountants (IPAs) according to guidelines established by LSC's Office of Inspector General (OIG). The OIG reviews the IPAs' audit reports and refers findings of non-compliance to LSC management for follow-up.

LSC management determines the appropriate corrective action and enforces compliance, reporting back to the OIG on the steps it has taken. The OIG continues to track the progress of corrective action and enforcement. No case is closed without the OIG's agreement. In addition to the system of IPA audits, the OIG also conducts on-site audits of grantee compliance with particular restrictions and requirements. In addition, the OIG has developed a strategic plan that includes a series of operational projects, both mandatory and discretionary, to ensure grantee compliance.

Review of the information that is available regarding on-site monitoring visits conducted from 1991 through October 1993 revealed the following:

1991: 150 Monitoring visits conducted.

1992: 145 Monitoring visits conducted.

1993: 91 Monitoring visits conducted through October 26, 1993.

1994: 0 Monitoring visits conducted.

1995: Approximately 120 on-site reviews.

1996: 0 On-site monitoring reviews.

1997: 0 On-site monitoring reviews.

1998-present: See attached chart.

6) Please provide the Subcommittee with a copy of all transcripts from LSC Board meetings, from 1996 to present, in which the Board addressed, discussed or was informed about access to documents by either the OIG, LSC management, or other LSC oversight groups, such as the LSC Enforcement & Compliance Division. Please also advise the Subcommittee whether there have been any other discussions, during this same time period, involving LSC Board members regarding these access issues and provide us with the appropriate documentation of the same.

See Attachment C.

7) Please explain each instance which has occurred from 1996 to present, in which any access to documents has been denied or restricted by an LSC grant recipient. For each instance please provide the following: the program name and location, the documents denied, the position taken by LSC management regarding the denial of access, an accounting of the documents ultimately provided, if any, and the sanctions imposed by the Corporation against the grantee.

The following answer was provided by the OIG: Access to documents has been denied to the OIG by an LSC grant recipient in the following instances:

- Legal Aid Bureau of Maryland (1999): see response to question B1.
- Legal Aid Bureau of Maryland, Legal Services of New York City (2000): see responses to questions B.1. and B.3.
- Georgia Legal Services Program and Atlanta Legal Aid Society (2000): see response to question B.1.
- California Rural Legal Assistance Foundation (2002): Documents denied were client names on pleadings before state administrative agencies. LSC Management was supportive of OIG access. With regard to the accounting of the documents, the grantee ultimately provided the client names as requested. No sanctions were imposed because the situations were resolved with full access provided.

Also see answer to question B2.

8) Please provide all LSC General Counsel opinions concerning the access to documents issue, from 1996 to the present.

See Attachment C.

9) Please provide all LSC General Counsel opinions concerning the Government in the Sunshine Act regulation. Please also advise if the General Counsel has considered the implications that might arise under the LSC Act in respect to your dual status as LSC President and Board member?

The LSC President, in consultation with LSC's General Counsel, has considered the issues related to serving as both President and LSC Board Member. *See Attachment C.*

10) Please immediately advise the Subcommittee, in writing, of any intention of the Board to revise the access to records policy of the Corporation at the April 56, 2002 Board

meeting. If the Board is planning to provide the Corporation with a new access protocol, this action is inappropriate at this time since President Bush nominated five new Board members on Monday March 25, 2002 and this remains the prerogative of the new Board. Please comment on this access protocol and the appropriateness of the same. Please also advise, in detail, all action, discussions, meetings, and changes to LSC policy or regulations which are anticipated to take place during the April 5-6, 2002 Board meeting.

On April 29, 2002, the LSC President issued a directive to Senior Management, OCE Staff, and all LSC Programs concerning LSC's procedures for making requests and reviewing documents about clients and their cases. *See Attachment E.*

D. Questions Regarding Lobbying by LSC Grantees and the case of *Regional Management Corp. v. LSC*

1) In the Fourth Circuit case *Regional Management Corporation v. LSC,* cited by both Attorney General Meese and Mr. Boehm during the hearing, U.S. District Judge Herlong found, "This short history of Polite's case, combined with the stern language in the LSC guidelines, demanded a more thorough investigation of this matter by LSC. Due to this failure to fully develop the factual record, LSC's decision that Berkowitz did not improperly lobby the General Assembly is without rational basis." LSC then successfully appealed Judge Herlong's decision by arguing that as a private corporation, LSC is not subject to judicial review. However, it appears LSC never sanctioned either the lawyer who conducted the lobbying or the involved grantee.

Please explain to the Subcommittee why LSC failed to take any action to enforce the statutory ban against political lobbying? In *RMC,* the client did not know the lawyer was lobbying on her behalf and was not a client at the time the lobbying took place. Please advise whether LSC agrees that legal services lawyers may lobby on behalf of individuals, and do so without a client's awareness or consent.

LSC takes very seriously allegations of statutory violations, particularly those involving political or lobbying activity. LSC investigated the specific allegation in the *Regional Management Corporation v. LSC* complaint, alleging that an attorney for South Carolina Legal Services Association (SCLSA) impermissibly lobbied the South Carolina legislature during the winter of 1994-95. This charge was investigated despite the fact that, in 1996, SCLSA was no longer receiving any LSC funding (which had ceased after 1995), the lobbying activity had ended approximately a year prior to the filing of the complaint, and the statutory exception permitting such lobbying had been eliminated by the changes to the lobbying restrictions that went into effect in 1996.

There were lobbying restrictions in effect during 1994 and 1995 when SCLSA's activities took place. Those restrictions, however, permitted a recipient of LSC funds to lobby on behalf of an individual client with respect to that client's legal rights and responsibilities, provided the client was not solicited for that purpose. LSC's 1996 investigation examined whether SCLSA properly invoked this exception to the restriction on lobbying. Based on the documentation received, including the client's 1993 signed retainer agreement expressly authorizing lobbying by SCLSA, LSC was satisfied that SCLSA lobbied on behalf of a real client and had not solicited the client for that purpose.

The lobbying activity, based on the aforementioned 1993 retainer agreement, began in early 1994 following the introduction of a consumer protection bill in the South Carolina legislature and continued until the enactment of the law in early 1995. Although the attorney devoted less than three weeks' time to this effort during these 18 months, LSC received no complaint until approximately one year after the incident took place. By the time the complaint was filed, changes in the law and SCLSA's circumstances limited any remedial effect of LSC action, had a violation been found. Compliance with the client exception to the lobbying restrictions became a moot point once the 1996 law eliminated that exception. Moreover, by 1996, SCLSA had ceased to be a recipient of LSC funding, eliminating the Corporation's ability to govern its future behavior and making more difficult the imposition of any fiscal sanction.

SCLAS did not receive any LSC funding after 1995. Prior to 1996, SCLSA received through Palmetto Legal Services, a state support grant activity from LSC. However, following funding cuts in its 1996 appropriations, LSC ceased to fund state support centers such as SCLSA. In anticipation of these cuts, SCLSA formally separated from Palmetto at the end of 1995 and became an independent entity. The staff attorney who lobbied the South Carolina legislature continued her employment at SCLSA, and thus is no longer receiving LSC funds. Although Palmetto Legal Services was the funding conduit for the state support grant for SCLSA, it had no direct involvement in the lobbying of the South Carolina legislature at issue in the complaint. No violation of the LSC Act was found to have occurred and no fiscal action involving Palmetto was warranted.

Based on its investigation into Regional Management's allegations and the documentation it received, LSC was satisfied that there was no violation of the statutory lobbying restrictions in effect at the time. The Corporation defended its determination before the District Court and stands by that determination today.

2) U.S District Court Judge Herlong's decision included his view that, "Berkowitz's lobbying of the South Carolina General Assembly transgressed the clear language of federal law and LSC guidelines." Please advise how the Corporation reached its final decision to dismiss the complaint made by Regional Management Corporation?

See Answer to Question D1.

3) Please list all complaints LSC has received, since the 1996 reforms took effect, alleging improper lobbying by LSC programs. Please specifically identify the following: the identity of the complainant, the program which was the subject of the complaint, the nature of the complaint, LSC's final decision, the date the complaint was received by LSC, and the date its decision was rendered.

LSC Docket Number 97-1-009. On February 6, 1997, the American Farm Bureau ("AFB") wrote LSC informing it of concerns that Michigan Migrant Legal Assistance Project, Inc. ("MMLAP"), a former grantee of LSC, may have been involved in impermissible lobbying activities in the state of Michigan. On May 8, 1997, LSC advised the AFB that it did not find MMLAP in violation of the relevant authorities. On June 13, 1997, the AFB sent a letter to the LSC OIG with regard to the initial concerns and also raising new issues. Accordingly, LSC management reviewed these concerns and found that its former grantee had acted consistent with the law in effect at the time of the activity. A detailed letter, dated October 28, 1997, was provided to both the AFB and LSC's OIG setting forth the reasons underlying LSC's determination.

LSC Docket Number 97C-1-040. On May 8, 1997, LSC Congressional Affairs employee Adam Goldberg advised several divisions within LSC that Jennifer Miller from the House Appropriations Committee asked LSC to look into the involvement by California Rural Legal Assistance ("CRLA") in a group established by the Department of Commerce, the "2000 Census Advisory Committee" ("CAC"). The predecessor to the OCE, the Compliance and Enforcement Division began its review of this matter. Based on the facts that were ascertained at the time, there were

questions of law which were put to the Issues Analysis and Development Unit ("IAD"), which was responsible for questions of the interpretation of law at that time. The IAD reviewed this matter and determined, by letter dated July 25, 1997, that CRLA's involvement with the CAC was consistent with the relevant authorities.

LSC Docket Number 97-1-055. On June 18, 1997, the Legal Services Corporation ("LSC") Office of the Inspector General ("OIG") referred a copy of a newspaper article to LSC management for review. The article indicated that the Executive Director of Ocean Monmouth Legal Services ("OMLS") participated in a public demonstration. LSC reviewed this matter, in part, to ensure that there was no violation on the restriction on "grass roots lobbying" as set forth in 45 C.F.R. Part 1612. Based on a review of contemporaneous documents, LSC determined that the activity in question was done by the program employee while not on OMLS company time. A concluding letter was sent on January 6, 1998.

LSC Docket Number 98-1-011. On March 23, 1998, Mr. Richard Newpher with the American Farm Bureau ("AFB") sent a letter of complaint to both the Office of the Inspector General ("OIG") and the LSC President. The complaint was that an organization which received funding from an LSC recipient in Oregon was engaged in lobbying activities. The OCE commenced review of this matter forthwith; however, after several attempts to obtain additional information from the complainant, the complainant sent a letter, dated May 20, 1998, withdrawing the complaint.

LSC Docket No. 96-1-021 and 96-1-022. These complaints were submitted to LSC on February 1, 1996, prior to the adoption of the 1996 reforms. Nevertheless, because of the significance and because the determination was issued following the adoption by Congress of the reforms, we list it here to ensure the completeness of the record. This complaint was filed by Gregory J. English, Esq. of the law firm of Wyche, Burgess, Freeman & Parham, P.A. Mr. English was representing Regional Management Corporation, Inc., Regional Finance Corporation of South Carolina, Inc. and Regional Finance Corporation of Georgia, Inc. (collectively referred to as "Regional") and the complaint was filed against Palmetto Legal Services ("PLS") and Neighborhood Legal Assistance Program ("NLAP"), both of which were LSC grantees at the time (neither is currently LSC-funded). See Answer to Question D1 for a complete discussion of the "Regional Management" case.

4) It has been brought to the attention of this Subcommittee the Georgia Legal Services Program (GLS) intends to submit an amicus curiae brief in opposition to the recent decision by the Georgia Superior Court in Georgia Dep't of Human Resources v. Sweat. Of course, the original 1974 Legal Services Corporation Act provides "No class action suit, class action appeal, or amicus curiae class action may be undertaken directly or through others, by a staff attorney." In addition, the 1996 congressional reforms and subsequent regulations specifically prohibits grantee attorney's from engaging in such work. Please advise if the Georgia program is, in fact, filing an amicus curiae brief in this case and how the Corporation intends to handle this situation.

In a matter related to this issue involving child support cases, it has been alleged that GLS systematically refuses to represent income-qualified non-custodial parents. Please advise if this is the case and explain how GLS can systematically exclude one group of potential clients. Please provide to the Subcommittee a list from GLS of the names and total number of child support and custody cases where GLS represented the non-custodial parent in the last five years.

In 1995, Pub. L. 104-134 imposed a new restriction on LSC grantees, prohibiting them from initiating or participating in class-action lawsuits. This was interpreted, through LSC regulation, to include the filing of *amicus curiae* briefs in class actions. 45 C.F.R. 1617.2(b).

Georgia Department of Human Resources v. Sweat, however, is not a class action. Rather, it is an individual action brought by the Department of Human Resources to collect child support payments. GLSP has not yet decided whether it will file an *amicus* brief, although GLSP leaders maintain that the Superior Court's decision is a radical departure from the long-standing interpretation of Georgia's child support calculation statutes and contrary to recommendations made by the Governor's Commission on Child Support in 2001.

GLSP has no policy against representing, or practice of systematically refusing to represent, non-custodial parents. Between 1997 and 2001, GLSP closed 1,665 child support cases and 5,611 custody/visitation cases. It is not possible to determine whether GLSP represented the custodial or non-custodial parent without reviewing each individual case file, and that information is not currently available.

As a standard practice, GLSP refers child support collection cases to the Georgia Office of Child Support Enforcement. GLSP has represented non-custodial parents in numerous child support modification cases, typically where the parent is disabled and seeks relief by way of a reduction or avoidance of contempt. In accordance with local program priorities set by its independent Board of Directors, GLSP generally does not accept a custody case unless there appears to be a potential danger to the child by the current custodian or person seeking custody.

E. Questions Pertaining to LSC Regulations, including Alien Representation and Financial Eligibility.

1. In a legal opinion issued by LSC's Office of General Counsel on December 3, 1999 responding to request for clarification of alien representation from the Executive Director of the Virginia Legal Aid Society, the OGC concluded "A group found to be financially eligible under § 1611 is not disqualified from eligibility if members of or persons served by the group are not United States citizens or aliens eligible for legal assistance under § 1626" and "thus, the citizenship and alien provisions in § 1626 do not apply to group eligibility."

This statutory interpretation by the Office of General Counsel appears, on its face, to be in blatant violation of both the federal law and the federal regulations. Specifically, this interpretation violates the alien eligibility requirements set forth in 45 C.F.R § 1626.5. Please note however, there are no provisions in the Act or regulations that waive the prohibition against representation of illegal aliens simply because they are part of a group. In addition, Congress has clearly mandated that LSC programs do not participate in class action lawsuits. Please identify for the Subcommittee what other kind of group representations, besides class action lawsuits, your General Counsel finds permissible.

How can LSC justify serving illegal aliens through group representation? Please provide copies of all LSC General Counsel opinions that address the following areas: financial eligibility of clients, client retainers, class action representation, client identity, and the requirement to provide access to client identifying information, including client names.

See Answer to Question E3, and requested documents are provided for in Attachment E.

2. Although there have been no recent changes in the underlying LSC Act or appropriations legislation, the Subcommittee notes a number of notices in the Federal Register of proposing changes to various regulations placed on the Corporation. Why are the specific regulations involving client eligibility, client retainer, and citizenship and alien eligibility, specifically 45 C.F.R. § 1610, 1611,1622 and 1626, being reviewed? Please describe, in detail, the current effort to change these regulations. Please specifically describe for the Subcommittee the following: the proposed changes, the reasons the changes are under consideration, documentation of all meetings, memos, letters, etc. regarding the proposed changes, and when the proposed changes are anticipated to be finalized.

Are there any other regulations that this Board intends to attempt to change prior to being replaced by President Bush's new Board of Directors? If so, please advise the specific federal regulation the Board is considering changing and explain why the changes are under consideration at this time.

See Answer to Question E3.

3. A recent Federal Register notice stated that LSC was utilizing Negotiated Rulemaking for regulatory changes. Could this be inefficient, in that a new LSC Board was just named by President Bush this week, and it would have its own management staff representing the position of LSC, rather than management staff who were hired by the previous Board? Why does the Corporation appear to be in such a hurry to enact changes to LSC's regulations and policies?

Is LSC adhering to the Negotiated Rulemaking Act (5 U.S.C. §561 et. seq.) as it seeks to promulgate these regulations? As a result of their participation in the process, will these stakeholders be forbidden to challenge the resultant regulations in court? Is the Brennan Center one of the stakeholders? If so, has the Corporation or the Board waived the requirement that stakeholders to a negotiated rulemaking not challenge the regulations in court? If so, why would the Corporation extend such an agreement contrary to the rationale of having such groups as the Brennan Center, participating in the negotiated rulemaking process?

LSC Rulemaking

The Legal Services Corporation is authorized by Congress to issue regulations as necessary to carry out its mission. See 42 U.S.C. § 2996(e). LSC, is not however, a "department, agency, or instrumentality of the Federal Government." See 42 U.S.C. § 2996(d). As such, LSC is not subject to the requirements of the Administrative Procedures Act or the Negotiated Rulemaking Act, which govern the rulemaking activities of Federal agencies. Rather, LSC is required "to afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the Federal Register at least 30 days prior to their effective date all its rules, regulations, guidelines and instructions." 42 U.S.C. § 2999(g).

Throughout its history, LSC has conducted its rulemaking in compliance with the statutory requirements described above, but, until relatively recently, had not had a written statement of the Board of Directors setting forth the procedures to be followed in the course of LSC rulemaking activities. Taking up the issue in 2000, the Board determined that, while there is no legal requirement for LSC to have a written protocol related to rulemaking, having one would serve to advance LSC's policy of conducting its rulemaking activities in a spirit of cooperative dialog with our recipients and other interested parties. Accordingly, on September 18, 2000, at a public meeting of its Board of Directors, the Legal Services Corporation adopted a new Rulemaking Protocol to govern its rulemaking activities. *See Attachment E.*.

It is the policy of LSC to conduct its rulemaking activities in a spirit of cooperative dialog with our recipients and other interested parties. Specifically, the Protocol has the following six objectives:

1. Enhanced implementation of the will of Congress as expressed in the LSC Act, amendments thereto and other statutory enactments;

2. Increased public participation in the manner and method in which LSC promulgates rules;

3. The adoption of procedures that reflect the best practices in rulemaking as articulated in the Administrative Procedures Act, the Negotiated Rulemaking Act of 1990 and Executive Order 12866;

4. Implementation of LSC's strategic initiatives as set forth in Strategic Directions, 2000-2005 (adopted January 29, 2000);

5. Formalization of LSC's policies governing rulemaking and specifically reserving specific responsibilities and authorities unto the Board; and

6. Development of a rulemaking protocol that is efficient and effective.

The Board, through the Operations and Regulations Committee (Committee), provides direction on LSC regulatory policy and establishes priorities for LSC rulemaking activities. The Committee looks to staff to effectuate LSC rulemaking policies and priorities through the Rulemaking Protocol. Final authority over LSC rulemaking policies and actions rests with the Board.

Under the Protocol, it is the Board's responsibility to identify appropriate subjects for rulemaking. Once the Board has agreed on a potential subject for rulemaking, LSC's Office of Legal Affairs (OLA), in close consultation with appropriate Corporation staff, develops a *Rulemaking Options Paper* which contains a discussion of the subject for the potential rulemaking, and includes an outline of the policy and legal issues involved. On the basis of the information in the ROP, the Committee, acting through its Chair, consults with the President before deciding whether to proceed as recommended. If, after consultation with the President, the Committee elects to proceed with a rulemaking, a rulemaking is established and notice of such is transmitted to the Board, the Inspector General and the public.

LSC's Rulemaking Protocol anticipates the use of both Negotiated Rulemaking and Notice and Comment Rulemaking. In a *Negotiated Rulemaking*, a group comprised of LSC representatives and affected and/or interested parties meet under the direction of a trained facilitator, (*A Working Group*) with the intention of developing consensus-based positions leading to regulations. The key feature of *Negotiated Rulemaking* is its collaborative approach, which seeks consensus where possible and decision making by LSC after full dialogue with the regulated community and other interested parties.

Negotiated Rulemaking Working Groups are appointed by the LSC President, working in consultation with the Committee, acting through its Chair, after soliciting suggestions for appointment to the *Working Group* from the regulated community, its clients, advocates, the organized bar and other interested parties. All groups or organizations asked to participate in a *Working Group* are responsible for selecting and designating their representatives. Membership on *Working Groups* is expected to be diverse and fully representative of the legal services community and other interested parties.

Each Working Group is governed by Ground Rules adopted by the Working Group at the outset of the process. The Ground Rules provide the basis for the process by which the Working Group will conduct its activities, covering such issues as attendance at meetings, who may address the group, how decision-making is to occur, the appointment of subcommittees to address specific issues of the Working Group, the development of a draft NPRM, the role of the facilitator, the use of information, and the challenges to rules adopted. Although each Working Group drafts its own Ground Rules, the respective Ground Rules are similar in most, if not all, respects.

A *Working Group* meets as necessary to develop a draft *Notice of Proposed Rulemaking (NPRM)*. The members of the *Working Group*, drawing upon their substantive expertise, discuss the subjects prompting the need for rulemaking and work toward developing a consensus on solutions to the problems identified. The consensus proposal of the group, once developed, must go through the formal *Notice and Comment* rulemaking process as an *NPRM*.

In *Notice and Comment Rulemaking*, LSC develops rulemaking proposals and takes comment on them in writing and at certain publicly designated meetings of the Committee. Employing this process in conjunction with *Negotiated Rulemaking* ensures that LSC's policy of cooperative dialogue is carried out in a fair, open and productive manner. LSC believes the *Notice and Comment* process allows for an effective dialogue between LSC and its recipients and other interested parties, even in those instances in which *Negotiated Rulemaking* is not used.

Under the Protocol, *Draft NPRMs* are set for consideration by the Committee at a public meeting. At the Committee meeting, management presents the *Draft NPRM* with the assistance of OLA, and opportunity for public comment is provided. The Committee then deliberates and decides whether to publish the *NPRM* or return it to staff for revisions. Once an *NPRM* has been approved for publication, it is published in the *Federal Register* for comment for at least 30 days (it is anticipated that in most instances the comment period will be 60 days, but under appropriate circumstances, could also be longer). However, the decision as to whether to limit the notice period to 30 days or to provide a longer comment period is a matter entirely within discretion of the Board.

Upon the close of the comment period, a draft Final Rule is developed and considered by the Committee at a public meeting. At the Committee meeting, management presents a summary of the comments received in response to the NPRM and the draft *Final Rule*. The Committee then deliberates on the draft Final Rule and may accept public comment as needed to assist in its deliberations. The Committee then votes on whether to recommend the *Final Rule* to the Board or return it to staff for revisions.

If the draft *Final Rule* is approved by the Committee for review by the Board, the Board considers the draft *Final Rule* and votes to adopt it or to return it to the Committee for further action. At its discretion, the Board may request the participation of members of the public during its deliberations. Once the *Final Rule* is adopted by the Board, OLA will make any necessary technical revisions to it and submit the final version for approval for publication to the Board's designee (for example, the Board Chair or the Committee Chair). The *Final Rule* will then be published in the *Federal Register* and placed on LSC's website.

Current LSC Rulemakings

The Corporation is currently conducting two negotiated rulemakings on our financial Eligibility rule at 45 CFR Part 1611 and our regulation on Restrictions on Legal Assistance to Aliens at 45 CFR Part 1626. Although the question from the Committee also refers to our regulations at 45 CFR Part 1610, Use of LSC Funds, Transfers of LSC Funds, Program Integrity, and 45 CFR Part 1622, Public Access to Meetings Under the Government in the Sunshine Act, LSC is not

currently considering changes to, or conducting any rulemaking on these or any other LSC regulations. Each of the two current rulemakings is described in greater detail below.

45 CFR 1611, Eligibility

Section 1007(a) of the Legal Services Corporation Act requires LSC to establish guidelines, including setting maximum income levels, for the determination of applicants' financial eligibility for LSC-funded legal assistance. Part 1611 implements this provision, setting forth the requirements relating to determination and documentation of client financial eligibility.

The current version of 1611 was adopted in 1983. In 1995, LSC published a proposed revision to Part 1611 which represented a major overhaul of the regulation (60 FR 3798, Jan. 15, 1995). The product of significant discussions and negotiation among LSC staff and representatives of the legal services programs, the proposed rule reflected an attempt to clarify and simplify the rule without changing most of the underlying policies and concepts of the rule. Following publication of the NPRM, however, no further action on the proposed revisions to Part 1611 was taken. Many outstanding issues prompting the 1995 proposed rulemaking remain extant and there are additional issues which have arisen since then. In addition, there are 1996 and 1998 statutory changes which need to be incorporated into the regulation. In light of the above, the LSC Board of Directors identified 45 CFR Part 1611, Eligibility, as an appropriate subject for rulemaking on January 27, 2001. On June 30, 2001, the LSC President and the Chair of the Operations and Regulations Subcommittee of the Board of Directors made a determination to proceed with the institution of a Negotiated Rulemaking to consider amendments to Part 1611. In accordance with the LSC Rulemaking Protocol, LSC published a notice in the Federal Register formally soliciting suggestions for appointment to the Negotiated Rulemaking Working Group from the regulated community, its clients, advocates, the organized bar and other interested parties (66 FR 46976).

After receiving submissions of interest, a Working Group was appointed. Each organization that requested to participate was appointed to the Working Group. The members of the Working Group are: Legal Services Corporation, Washington, D.C. (represented by Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs; John Eidleman, Program Counsel, Office of Program Performance; and Danilo Cardona, Director, Office of Compliance and Enforcement); Legal Services Corporation, Office of Inspector General, Washington, DC (represented by Laurie Tarantowicz, Assistant Inspector General and Legal Counsel); Center for Law and Social Policy, Washington, DC (represented by Linda Perle, Senior Staff Attorney – Legal Services); National Legal Aid and Defenders Association, Washington, DC (represented by Jon Asher, Member NLADA Regulations Committee and Executive Director of Colorado Legal Services); Legal Services of North Carolina, Raleigh, NC (represented by George Hausen, Interim Executive Director); Northwest Justice Project, Seattle, WA (represented by Deborah Perluss, Director of Advocacy/General Counsel); Blue Ridge Legal Services, Inc., Harrisonburg, VA (represented by John Whitfield, Executive Director); West Texas Legal Services, Fort Worth, TX (represented by Vernon Lewis, Deputy Director); Land of Lincoln Legal Assistance Foundation, Inc., Alton, IL (represented by Joseph Bartylak, Executive Director); Atlanta Legal Aid Society, Atlanta, GA (represented by Steven Gottlieb, Executive Director); and the American Bar Association's Standing Committee on Legal Aid and Indigents and Defendants

(represented by Phyllis Holmen, Member of the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and Executive Director, Georgia Legal Services Program).

The Working Group has held three meetings to date: January 7-8, 2002; February 11-12, 2002; and April 11-12, 2002. All three meetings were noticed in the Federal Register and were open to public observation. The Working Group has been conducting its work under the guidance of a professional facilitator. The facilitator, although selected by and under contract to LSC pursuant to LSC's Rulemaking Protocol, does not represent LSC on the Working Group and serves as a neutral with the continuing support of the Working Group.

In accordance with the Rulemaking Protocol, discussed above, the goal of the Working Group is to develop, to the extent possible, a consensus-based draft Notice of Proposed Rulemaking. In considering the regulations at Part 1611, the Working Group is considering reorganization of the regulation to make it easier to read and follow; simplification and streamlining of some of the requirements of the rule to ease administrative burdens faced by LSC grantees in implementing the regulation and to aid LSC in enforcement of the regulation; and clarification of the focus of the regulation on the financial eligibility of applicants for LSC-funded legal services.

The Working Group's Ground Rules address challenges to any final rule eventually adopted as a result of the Negotiated Rulemaking. Specifically, paragraph 4(h) of the Ground Rules provides that "[e]ach party agrees not to challenge the rule in court to the extent that the final rule and its preamble have the same substance [as the proposed rule], except if a party has expressed dissent as provided in this Section regarding Agreement." Thus, the parties have agreed that they will not challenge the resulting regulations in court, except as relates to portions of the rule about which the Working Group could not reach consensus agreement.

45 CFR Part 1626, Restrictions on Legal Assistance to Aliens

45 CFR Part 1626 sets forth the restrictions on legal assistance that LSC grant recipients may provide to non-U.S. citizens. Although Part 1626 was last amended relatively recently (1997), this regulation has been identified both by staff and field representatives as in need of additional amendment. In the years since its last amendment, several practical issues have emerged, such as issues relating to documentation requirements, representation of groups of aliens, and representation of legal aliens not currently covered by the rule. In addition, the findings of the Erlenborn Commission and certain provisions from the Victims of Trafficking and Violence Protection Act of 2000 need to be incorporated into the 1626 regulations. In light of the above, the LSC Board of Directors identified 45 CFR Part 1626, Restrictions on Legal Assistance to Aliens, as an appropriate subject for rulemaking on January 27, 2001. On June 30, 2001, the LSC President and the Chair of the Operations and Regulations Committee made a determination to proceed with the institution of a Negotiated Rulemaking to consider amendments to Part 1626.

In accordance with the LSC Rulemaking Protocol, LSC published a notice in the Federal Register formally soliciting suggestions for appointment to the Negotiated Rulemaking Working Group from the regulated community, its clients, advocates, the organized bar and other interested parties (66 FR 46977).

After receiving submissions of interest, a Working Group was appointed. Each organization that timely requested to participate was appointed to the Working Group. The members of the Working Group are: Legal Services Corporation, Washington, D.C. (represented by Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs; Cynthia Schneider, Program Counsel, Office of Program Performance; and Danilo Cardona, Director, Office of Compliance and Enforcement); Legal Services Corporation, Office of Inspector General, Washington, D.C. (represented by Laurie Tarantowicz, Assistant Inspector General and Legal Counsel); Center for Law and Social Policy, Washington, D.C. (represented by Linda Perle, Senior Staff Attorney – Legal Services); National Legal Aid and Defenders Association, Washington, DC (represented by Jose Padilla, Member NLADA Board of Directors and Executive Director of California Rural Legal Assistance); Legal Services of North Carolina, Raleigh, N.C. (represented by George Hausen, Interim Executive Director); the American Bar Association's Standing Committee on Legal Aid and Indigents and Defendants (represented by Phyllis Holmen, Member SCLAID and Executive Director, Georgia Legal Services Program); Northwest Justice Project, Seattle, Wash. (represented by Blanca Rodriguez, Attorney – Farmworker Unit); the Brennan Center for Justice (on behalf of a coalition also including Make the Road by Walking, Inc. and Farmworker Legal Services of New York, Inc. and represented by Meena Sripathy, Global Public Service Law Fellow); the National Immigration Law Center (represented by Sara Campos, Staff Attorney); Legal Services of Eastern Missouri (represented by Angie O'Gorman, Director – Immigration Law Project); California Coalition of Welfare Rights Organizations (represented by Kevin Aslanian, Director); Texas Rural Legal Aid (represented by D. Michael Dale, Counsel); Legal Aid Foundation of Los Angeles (represented by Michael Ortiz, Directing Attorney – Immigration Unit); Legal Aid Services of Oregon (represented by Janice Morgan, Director LASO Farmworker Program); Florida Rural Legal Services (represented by Christine Larson, Deputy Director); Legal Assistance Foundation of Chicago (represented by Lisa Palumbo, Supervisory Attorney, Legal Services for Immigrants); California Rural Legal Assistance (represented by Cynthia Rice, Director of Litigation, Training and Advocacy); and Professor Michael Churgin, University of Texas School of Law.

The Working Group has held two meetings to date: January 28-29, 2002 and March 4-5, 2002. A third meeting is scheduled for May 9-10, 2002. All meetings are noticed in the Federal Register and are open to public observation. The Working Group has been conducting its work under the guidance of a professional facilitator. The facilitator, although selected by and under contract to LSC pursuant to LSC's Rulemaking Protocol, does not represent LSC on the Working Group and serves as a neutral party with the continuing support of the Working Group.

In accordance with the Rulemaking Protocol discussed above, the goal of the Working Group is to develop, to the extent possible, a consensus-based draft Notice of Proposed Rulemaking. In considering the regulations at Part 1626, the Working Group is looking primarily at issues relating to documentation and group representation. With respect to documentation, the Working Group is seeking to develop a balance of important interests: how to lessen the paperwork burden for our grantees, while ensuring that sufficient records exist for compliance monitors and auditors to be able to perform meaningful compliance checks.

With respect to group representation, LSC notes that Part 1626 addresses only individuals and has no provisions dealing with groups of aliens and the eligibility of such groups for service by LSC recipients. At the same time, the eligibility requirements at 45 CFR Part 1611 provide that

group eligibility is determined by the financial eligibility of its members and do not address the citizenship status of the group members. This creates an anomalous situation under the regulations, as discussed in a 1999 OLA advisory opinion, in which a group of aliens could qualify for assistance, even though under the Part 1626 restrictions, none of the individual group members would be eligible for assistance as individuals. Section 504(a) of the FY 1996 Appropriations Act provides that "[n]one of the funds appropriated in this Act . . . may be used to provide financial assistance for or on behalf of any alien," except as otherwise permitted by that Act. Thus, LSC agrees that the anomaly created by the regulations is not sustainable under the statute. The Working Group is seeking to clarify the law on this point and make sure the regulations are consistent with the law.

In addition, the Working Group is considering the implementation of statutory changes required by the Victims of Trafficking and Violence Protection Act of 2000 ("the Act"). That Act was signed into law on October 28, 2000, Pub. L. No. 106-386. Section 107 of the Act makes victims of a severe form of trafficking in persons eligible for assistance from Legal Services Corporation grant recipients, notwithstanding the immigration status of such persons. The regulations at Part 1626 need to be amended to incorporate this new authority for providing assistance to such persons. Finally, the Working Group is considering clarification of regulations to expressly incorporate the interpretation of "presence" articulated by the Erlenborn Commission and adopted by the Board.

The Working Group's Ground Rules address challenges to any final rule eventually adopted as a result of the Negotiated Rulemaking. Specifically, paragraph 4(h) of the Ground Rules provides that "[e]ach party agrees not to challenge the rule in court to the extent that the final rule and its preamble have the same substance and essentially the same language [as the proposed rule], except if a party has expressed dissent as provided in this Section regarding Agreement." Thus, the parties have agreed that they will not challenge the resulting regulations in court, except as relates to portions of the rule about which the Working Group could not reach consensus agreement.

Timetable for Completion of Current Rulemakings

Because neither Working Group has yet completed its work, there is, at this time, no draft Notices of Proposed Rulemaking under consideration by the Committee or the Board. Rather, it is anticipated that once each Working Group completes its efforts, respective draft NPRMs will be prepared for consideration by the Committee. In each case, it is unlikely there will be a draft NRPM ready for consideration by the Committee at its next meeting. In each case, once the Committee considers and approves for publication and comment proposed changes to the rule, no draft Final Rule is likely to be considered for adoption until later in the year.

As is clear from the preceding description, negotiated rulemaking is a lengthy and involved process. So, while the Corporation was aware that the rulemakings were being started at a time of transition, the Corporation was also aware that it would be unlikely that final rule changes would be adopted until after a new Board was in place and had a chance to review the proposed changes. Further, given this state of affairs, and the nature of the issues being considered in each rulemaking, LSC believes that holding off on beginning the negotiated rulemaking process

(essentially bringing the Corporation's regulatory program to a halt pending the appointment and confirmation of a new Board at some point in the indeterminate future) would have been inefficient and unnecessary. In fact, the Corporation appears to have been correct in its judgment on this matter as it appears, as noted above, that the new Board will, indeed, have the opportunity to consider any regulatory changes to 1611 and 1626 before they are finalized.

Distinctions Between Representation of Groups and Class Action Lawsuits

Section 504(a)(7) of the 1996 Appropriations Act (and carried forth in subsequent appropriations act, including the current one) prohibits a recipient of LSC funds from "initiat[ing] or participat[ing] on in a class action suit." This prohibition was implemented by adoption in LSC's regulations at 45 CFR Part 1617 (61 FR 63754, December 2, 1996). As noted in section 1617.1 of those regulations, "[t]his rule is intended to ensure that LSC recipients do not initiate or participate in class actions."

The term "class action" was not formally defined in the original 1996 legislation, although the common understanding was that the term referred to class action lawsuits as that term is used in the Federal Rules of Civil Procedures and similar state rules. With that understanding, in adopting the implementing regulations, LSC defined the term "class action" as "a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed." LSC has received no indication from Congress in the intervening six years that the definition of class action contained in Part 1617 is anything other than what was intended by Congress in adopting the original prohibition on class action suits.

LSC's regulations on eligibility, 45 CFR Part 1611, have permitted representation of groups of clients, under limited circumstances, since 1976. The current version of the regulation permits groups of clients to receive legal assistance when the group is primarily composed of eligible individuals and the group lacks the means to obtain private counsel. Under the regulation a group client could be either an organization run by eligible individuals or simply a number of individuals each of whom has a similar claim. An example might be a group of tenants seeking to ensure that the building in which they live is habitable. While the program could represent each tenant individually, it is more efficient and effective, in many such cases, for the program to represent the individuals in a group. Or, if the tenant's have formed a tenant's association to represent the tenant's association organizational clients. Often such a group is not engaging in litigation, thus not implicating the class action prohibition in any manner. Even if litigation is necessary, the class action prohibition is not necessarily implicated. Lawsuits may be brought on the behalf of multiple individuals without such suit being a class action. Unless litigation brought by a group is appropriately certified as a class action lawsuit under Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure, the prohibition is not intended to and does not apply. LSC has received no indication from Congress since the adoption of the prohibition on class action lawsuits in 1996, that the group representation permitted by Part 1611 is inconsistent with the prohibition.

4) In contemplating changes to 45 C.F.R. § 1626, the regulation involving alien representation, has the Corporation or the Board considered its implications in the War

on Terrorism. On the LSC Website of recent press coverage, there is an article from the Chicago Tribune titled "Arabs are Offered Legal Aid; Groups Set to Aid Those Called for 9/11 Questioning." Is the LSC funded recipient in Chicago assisting any alien persons or alien students who are being investigated for potential crimes against the United States? Has the Corporation considered this possibility? What is the LSC doing to monitor this situation and to ensure that no LSC funds are expended in violation of the law?

LSC has not surveyed LSC-funded programs to determine whether they are serving any alien persons or alien students who are being investigated for potential crimes against the United States. We will follow-up on this matter and provide further information if it is available.

5) What sanctions has LSC taken against any program for a violation of the LSC Act or Regulations in the past 24 months? Does LSC routinely sanction programs for serious violations of the LSC Act or regulations? If there have been no sanctions, is the Subcommittee to assume that the Corporation has encountered 100% compliance by all LSC programs?

LSC has made every effort to ensure the congressional restrictions placed on grantees are strictly observed. Management has taken strong action in those instances when grantees have failed to comply with the law or LSC regulations. Fiscal sanctions have and will continue to be imposed where necessary and appropriate up to and including termination of the grant in its entirety. Most recently, for example, LSC suspended 20 percent of a program's funding after its repeated failure to submit the required yearly audit to LSC's Inspector General. Another program was placed on month to month funding after questions surfaced involving accuracy of case counts and proper utilization of resources. We take very seriously the congressionally imposed requirements on our grantees and will continue to vigorously monitor them to ensure compliance.

On June 20, 2000, LSC made a final determination to suspend 100 percent of LSC funding to Legal Services of South Central Tennessee, Inc. (LSSCT), effective July 1, 2000, after the program failed to submit an acceptable audit for the year ending December 31, 1999 as required by law. The suspension of funding was withdrawn on August 14, 2000 because LSSCT completed and submitted to the LSC Office of Inspector General an acceptable audit for the year ending December 31, 1999.

On June 20, 2000, LSC made a final determination to suspend 20 percent of LSC funding to the Legal Services of Northwest Indiana, Inc (LSNWI), effective July 1, 2000, after the program failed to submit an acceptable audit for the year ending December 31, 1999 as required by law. The suspension of funding was withdrawn on July 11, 2000 because LSPNI completed and submitted to the LSC Office of Inspector General an acceptable audit for the year ending December 31, 1999.

On June 20, 2000, LSC made a final determination to suspend 100 percent of LSC funding to the Legal Services Program of Northern Indiana, Inc., (LSPNI), effective August 1, 2000, after the program failed to submit an acceptable audit for the year ending December 31, 1999 as required by law. The suspension of funding was withdrawn on July 19, 2000 because LSPNI completed and submitted to the LSC Office of Inspector General an acceptable audit for the year ending December 31, 1999.

On September 5, 2001, LSC made a final determination to suspend 20 percent of LSC funding to Wyoming Legal Services, Inc. (WLS), effective October 1, 2001, after the program repeatedly failed to submit an acceptable audit for the year ending December 31, 2000, as required by law. The suspension of funding was withdrawn on October 24, 2001 because WLS completed and submitted to the LSC Office of Inspector General an acceptable for the year ending December 31, 2000. *See Attachment E.*

Passaic County Legal Aid Society (PCLAS) has been on month-to-month funding since January 2001 and remains on this type of provisional funding after questions surfaced regarding high attorney turnover, accuracy of case counts, and proper utilization of resources. LSC is the secondary funder of this program, with Legal Services of New Jersey, the state program, being the primary funder. In November of 2001, LSNJ, the State of New Jersey Office of Civil Legal Assistance, and LSC conducted a joint evaluation visit to PCLAS. The findings of the team confirmed continuing and very serious problems within PCLAS.

F. Questions Pertaining to Program Integrity and Mirror Corporations

1. Has LSC identified which of its funded programs share office space and/or are located in the same building as a group performing restricted activities? If so, please identify all such LSC programs along with the name of the group undertaking restricted activities.

Has LSC identified which of its funded programs share a common staff member with groups involved in restricted activities? If so, please identify all such programs along with the name of the group with shared staff.

Has LSC identified which of its funded programs share common directors with groups involved in restricted activities? If so, please identify all such programs along with the name of the group with which they share a director.

LSC does not track or monitor the work of non-LSC funded organizations. LSC is aware of certain situations in which an LSC grantee shares office space, resources, or staff with an entity that engages in restricted activity. See answer to question F2 for a full explanation of the regulation or such arrangements and for a summary of LSC investigations concerning this regulation.

2. Please describe in detail what steps LSC takes to ensure that the Program Integrity Regulation, 45 C.F.R. § 1610, is being properly enforced. Please identify all complaints LSC has received, from 1996 to present, regarding potential violations of the program integrity regulation. This information should include a list of the programs involved, the name and address of the complainant, a summary of the allegations, a summary of the action taken, and the date the complaint was received and subsequently answered.

To ensure the integrity of our grantees' work, the LSC Board passed a comprehensive regulation requiring that our recipients maintain "objective integrity and independence" from any entity engaged in restricted work. In writing this regulation, LSC borrowed directly from the U.S. Supreme Court's ruling in *Rust v. Sullivan*, the controlling precedent on "objective integrity" and the use of federal funds.

Since 1997, each recipient's governing body is required under 45 CFR Part 1610 to certify annually that the program is in compliance with the program integrity requirements of Section 1610.8. Grantee Boards are required to certify that their relationships of any type with any organization that engages in restricted activities comply with the program integrity requirements and to retain documentation of that compliance.

The program integrity of an LSC-funded recipient is a case-by-case determination that is based on the totality of the circumstances. 45 C.F.R. Section 1610.8 states that grantees must have objective integrity and independence from organizations that engage in restricted activities. The grantee meets the requirements of this regulation if the other organization is a legally separate entity, it does not transfer LSC funds to the organization and LSC funds do not subsidize restricted activities, and it is physically and financially separate from the other entity. In the preamble to the final rule published in the federal register, LSC explained Section 1610.8 requires the grantees to ensure that it is not identified with restricted activities and that the other organization is not so closely identified with the recipient that there might be confusion or misunderstanding about the recipient's involvement with or endorsement of prohibited activities.

In addition to the annual program integrity ceritifications, each local program's annual financial statement audit includes a mandatory audit of compliance with LSC's regulations. These audits are conducted by Independent Public Accountants according to guidelines established by LSC's Office of Inspector General. The OIG reviews the IPAs' audit reports and refers findings of

non-compliance to LSC Management for follow-up. LSC Management determines the appropriate corrective action and otherwise enforces compliance, reporting back to the OIG on the steps it has taken. The OIG continues to track the progress of corrective action and enforcement. No case is closed without the OIG's agreement.

In October 2001, the Inspector General reported that Lane County Legal Aid Service, Inc., (376 East 11th Avenue, Eugene, OR 97401-3246) was in violation of the program integrity regulation. To date this report has not been referred to LSC Management for action. We will take the appropriate action when the Inspector General refers this issue to Management. Lane County, however, will be merged into a new statewide federal grantee by 2003.

There was no specific complaint regarding Lane County. The grantee was selected by the OIG because of its relationship with another legal services provider. This information came from an IPA annual financial audit. The IPA audit disclosed the program integrity issues. Management was informed of a potential program integrity issue via the audit report dated March 2001.

In March 2002, the LSC Inspector General issued a report concerning Central Virginia Legal Aid Society concluding that the grantee used LSC funds to pay its staff that performed some intake services for the Justice Center at its Charlottesville and Petersburg, Virginia. offices. In addition, the report states, "The grantee's intake staff determined client eligibility, documented client identify, determined the client's problem and referred some clients to the Justice Center. Client information was provided to the Justice Center. Grantee staff at the Charlottesville branch office had access to Justice Center attorneys' calendars and scheduled appointments for some clients.

The OIG recognizes that the intake process is an efficient and convenient way to serve clients, especially those that the grantee cannot assist. However, LSC provided funds were used to pay the intake staff and the Justice Center was subsidized, to a limited extent. Because of the difficulty in separating grantee work from that done for the Justice Center, we were not able to estimate the amount of the subsidy. The grantee's management agreed to correct the problem by paying the intake staff with non-LSC funds."

The following answer was provided by the LSC's OIG: Complaints received by OIG from 1996 to the present regarding potential violations of LSC's program integrity regulation:

Date of complaint: May 2001; Program involved: California Rural Legal Assistance Complainants: Representative Calvin M Dooley; Michael Marsh, CEO, Western United Dairymen. Summary of allegations: LSC funding provided to California Rural Legal Assistance may have been used to support interrelated organizations, California Rural Legal Assistance Foundation and the Center on Race, Poverty and the Environment, which engage in activities that federal law prohibits the use of LSC funds to support. California Rural Legal Assistance may not be maintaining objective integrity and independence from such organizations as required by LSC regulations. Action taken: Commenced an audit of compliance by California Rural Legal Assistance with LSC's program integrity regulation, 45 CFR Part 1610. Audit is in process.

Date of complaint: December 2000; Program involved: Legal Services of Southeastern Michigan; Complainant: Anonymous; Summary of allegations: Grantee may not be maintaining objective integrity and independence from an organization providing legal assistance in restricted cases. Action taken: Grantee was to be audited as part of OIG program integrity audits after Michigan completed reconfiguration through state planning. Program is no longer an LSC grantee, but program integrity audit in Michigan still planned to start following completion of the CRLA audit. Projected start date is September 2002.

3. The LSC Inspector General issued Audit Report No. 02-01 in October 2001 dealing with the activities of LSC grant recipient Lane County Legal Aid Service, Inc. The LSC IG found that there was a close working relationship with the Lane County Law and Advocacy Center, an unrestricted program. The IG's Report stated, "the grantee and Advocacy Center are co-located in the same building with little to distinguish between the organizations. The organizations share both professional and administrative staff and are linked financially through payments for rents and services. In our opinion, the organizations are virtually indistinguishable to clients and individuals not aware of the working arrangements under which the organization function."

See Answer to Question F2.

Has LSC found the relationship documented between the grantee and the Advocacy Center in this case to be a violation of the Program Integrity regulation, 45 C.F.R. § 1610? If not, please explain why not? As LSC has the responsibility to enforce its regulations, how is it that this apparent breach of the regulation was not discovered by LSC first? When was the relationship between the grantee and the Advocacy Center first brought to LSC's attention?

As stated in Answer to Question F2, the IG's report that Lane County Legal Aid Service, Inc., was in violation of the program integrity regulation has not been referred to LSC Management for action to date. We will take the appropriate action when the Inspector General refers this issue to Management. Lane County, however, will be merged into a new statewide federal grantee and will cease to exist by 2003.

There was no specific complaint regarding Lane County. The grantee was selected by the OIG because of its relationship with another legal services provider. This information came from an IPA annual financial audit. The IPA audit disclosed the program integrity issues.

4. A January 7, 2002 article in the Legal Times titled "Divide and Conquer," appears to promote the "mirror corporation" strategy as a method for legal services lawyers to engage in restricted activities. Does this article concern you and what is the Corporation specifically doing to insure program integrity, in light of this information?

LSC had made every effort to ensure compliance within applicable Federal law and regulations, including the maintenance of program integrity. As reported before, the LSC Board passed a comprehensive regulation requiring that our recipients maintain "objective integrity and independence" from any entity engaged in restricted work. The purpose of this regulation (1610) was to ensure the integrity of LSC-funded grantee work. Management remains

committed to taking strong action in those instances when grantees have failed to comply with the law or LSC regulations. *See Attachment F.*

5. Please describe to the Subcommittee what specific factual evidence would result in the Corporation finding a program has violated 45 C.F.R. § 1610.8, the Program Integrity regulation. Please provide a list of every program the Corporation has found in violation of this regulation. What action has the Corporation taken against such programs?

45 C.F.R. Section 1610.8 states that grantees must have objective integrity and independence from organizations that engage in restricted activities. The grantee meets the requirements of this regulation if the other organization is a legally separate entity, it does not transfer LSC funds to the organization and LSC funds do not subsidize the restricted activities, and it is physically and financially separate from the other entity. The preamble to Section 1610.8 requires the grantee to ensure that it is not identified with restricted activities and that the other organization is not so closely identified with the recipient that there might be confusion or misunderstanding about the recipient's involvement with or endorsement of prohibited activities. See also Answer to Question F2.

Pursuant to the regulation, the program integrity of an LSC-funded recipient is a case-by-case determination that is based on the totality of the circumstances. We are unable, therefore, to speculate on the factual grounds that would result in a finding that an LSC-funded program breached the program integrity regulation.

G. Questions Pertaining to State Planning and Reconfiguration of LSC State Programs

1. Please generally describe the Corporation's efforts at state planning. How does the Corporation ensure that Grantees do not use LSC resources on prohibited areas of practice when conducting state planning activities?

To date, the *State Planning Initiative* has resulted in significant and positive change in the delivery of legal services throughout the country. One measure of the initiative's success can be seen in the number of states that have developed formally designated state planning bodies in response to LSC's directive to all grantees to collaborate more closely with a wide range of state equal justice stakeholders. Prior to the issuance of LSC Program Letter 98-1 launching the *State Planning Initiative* in 1998, only 10 states had formally designated state planning bodies committed to coordinating and improving the delivery of statewide legal services. Today, 36 states have assembled designated state planning bodies in response to Letter 98-1, and most other states are in the process of creating one. One of the essential functions of these newly constituted bodies is to promote resource development efforts through broad public-private coalitions that maximize the ability of LSC grantees to leverage their federal investment into additional state, local, and private funds. Indeed, more than half of all national legal services funding is derived from non-federal dollars, so these coalitions are essential to the preservation of crucial, scarce resources.

In 1996, Congress mandated a system of competitive grant-making for federal legal aid dollars, and LSC has utilized competition to advance the goals of state planning, offering service contracts to programs with a demonstrated ability to work together and make the highest and best use of every federal dollar. Today, LSC continues to monitor the ongoing retooling of existing systems that began in 1998. Through program reconfiguration, the number of grantees receiving LSC funding has decreased from 262 in 1998 to 207 in 2001. In 2002, LSC projects that there will be approximately 170 programs. Federally funded legal services programs continue to serve every county in the nation.

All grantee actions, including state planning activities, must be in compliance with LSC's regulations and all applicable laws. LSC management ensures accountability to Congress and the American taxpayers through aggressive oversight and enforcement of federal laws and other requirements.

2. The Special Report to Congress dated September 2001 (September 2001 State Planning & Reconfiguration - A Special Report to Congress) is confusing. It can be read as directing statewide coordination of services either within the LSC-funded programs only, or as a coordinated effort between both the LSC and non-LSC funded programs. Which reading of this document is correct? Did LSC direct its recipients to coordinate the delivery of legal services with programs that conduct prohibited work? If so, is the LSC currently still engaging in such a directive? If yes, why did LSC direct its recipients to work with non-LSC programs that conduct prohibited activities?

The State Planning Initiative requires all LSC grantees to communicate with other legal services providers to ensure the federal investment in each state is being utilized in the most effective manner. LSC programs do not "coordinate" work with entities engaged in prohibited work.

LSC programs must regularly communicate with each other, and other legal services providers, in order to make rational decisions concerning the allocation of resources with service areas for eligible clients. The LSC *State Planning Initiative* does **not direct** LSC-funded programs to support or engage in any restricted work.

3. We draw your attention to "Part IV: Conclusion" of the September 2001 report which states:
"In an overwhelming majority of instances, LSC has used the competitive bidding process to forge deeper bonds with its grantees and stakeholders, allowing LSC to serve as an active partner in planting the seeds of comprehensive, integrated state justice communities nationwide."

We also note that the LSC Strategic Directions 2000-2005, as posted on the LSC website, states on page four "Through the State Planning Initiative, LSC seeks to facilitate the creation and maintenance of comprehensive and integrated civil legal services delivery systems, coordinated statewide."

Does LSC view itself as responsible to ensure that all low-income clients, including those who are specifically prohibited by statute from receiving service from LSC grantees, are being served within the integrated service delivery model? If yes, why is LSC expending resources to coordinate services to clients that Congress has prohibited from receiving such services? How much money and time has LSC spent in this effort?

LSC does *not* "view itself as responsible to ensure all low-income clients, including those who are specifically prohibited by statute from receiving service from LSC grantees, are being served within the integrated service delivery model." However, LSC is making every effort to ensure that all poor people who are eligible for service as defined by Congress within a state are able to receive the best possible assistance, including referrals to *pro bono* panels or other legal services providers. The LSC Act of 1974 charges the Corporation with the responsibility to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas." Ensuring that our grantees coordinate their efforts with other providers, agencies, and social services groups serving the same client base is essential to guaranteeing that legal services are provided economically and without unnecessary duplication.

For Fiscal Year 2002, approximately $1,054,005 of LSC's management and administration budget was allocated on activities to implement and support the *State Planning Initiative.*

LSC's efforts mirror closely the strategies outlined in President Bush's *Management Agenda*, issued by the Office of Management and Budget in August 2001 to guide agencies' approaches for improving the management and performance of the federal government. The President's plan instructs all federal agencies to focus on their mission and goals, strategize ways to achieve those goals, and follow up with immediate steps to improve structural organizations and business practices to operate at maximum efficiency and effectiveness. *State Planning* is the name that LSC has given to its long-term and nationwide initiative to compel our grantees to do what the President is asking every federal agency to do - define their desired outcomes; plan strategically; involve all stakeholders in planning for the efficient, performance-based delivery of services; and

align core processes and resources to support mission-related outcomes throughout each state. Central to LSC's *State Planning* is a requirement that grantees improve their organizational processes, identify service gaps, set improvement goals; and eliminate duplication. In order to accomplish these aims, grantees must be encouraged to survey the landscape of available client services and coordinate with other community organizations committed to promoting access to justice.

4. Prior to the 1996 statutory requirement for competition for LSC grants, some states were served by only one LSC-funded program. In those states, did the LSC direct coordination of the delivery of service work between restricted and nonrestricted programs? If yes, with whom did LSC conduct such coordination? In addition, why would LSC coordinate with non-LSC funded entities? What LSC resources have been used to coordinate services between prohibited and nonprohibited programs? Please identify how much money, as well as LSC-funded staff time has been expended in this manner. In addition, please explain how this work is justified under the restrictions that LSC funds should not be used to support prohibited activities?

Prior to 1996, LSC programs were able to use **non**-LSC funds to engage in activities that were not permissible with LSC funds. In states with only one LSC program, the programs in question did often communicate with other providers concerning litigation or other services. Since 1996, all funding regardless of the origin can only be used to support allowable activities and represent eligible clients. LSC funding may not be used to support restrcited legal work and LSC resources may not be used "to coordinate" services for restricted legal work provded by non-LSC funded entitities. LSC programs may refer ineligible clients to non-LSC funded programs and may communicate with other providers on a wide range of issue to ensure appropriate legal assistance for eligible clients within a service area or state. Communication with other legal providers is only one goal of state planning; much of the effort is focused on encouraging LSC programs to establish and maintain relationships with *pro bono* groups, judges, court administrators, law enforcement agencies, churches, and other non-legal service agencies to expand services to eligible clients. LSC does not coordinate with non-LSC funded entities that deliver restricted legal work; LSC works only with grantees that provide LSC allowable legal work.

H. Questions Pertaining to Competition for LSC Funds

1. Is it the opinion of the Corporation, that it has met its overall mandate to facilitate competition in awarding federal grant monies to programs nationwide. If so, please explain to the Subcommittee how the Corporation has met this congressional mandate.

LSC has fully implemented the mandate by Congress to establish a system of competition for grants, and to promote competition.

The role of LSC is to manage and oversee the federal funds that support the direct provision of legal services by LSC-funded grantees across the nation and its territories. Since 1996, the Corporation has used a system of competition for grants to promote the economical and effective delivery of legal services, as required by § 1007(a)(3) of the Legal Services Corporation Act. We encourage local legal services providers and others to compete for available grants by broadly circulating information about the availability of grant funds and by providing outreach and technical support to potential applicants.

In the competition process, LSC evaluates applications according to established quality standards and awards grants to the applicants best able to provide high-quality legal services in accordance with applicable legal requirements. LSC also uses the competition process to promote increased volunteer private attorney involvement and to expand public-private partnerships, through which other resources can be secured to build upon federal funding. During the grant period, LSC works with successful applicants to improve areas identified in the competition process as requiring development.

Competition has resulted in improved legal assistance to our client community. First, it ensures the most qualified applicant oversees the federal investment to deliver legal assistance to low-income persons in each service area. Second, the competition process identifies strengths and weaknesses of programs. When necessary, programs are visited, short-term funding is established, and improvement efforts are undertaken. This process has led to significant change. In instances in which reform is not forthcoming, it has led to the replacement of providers. Third, LSC is developing the technological capacity to analyze application data in order to identify significant statistics and trends that are valuable in making grant decisions. Finally, competition has helped facilitate the growth of centralized intake systems, increased consumer education and self-representation, and more effective *pro bono* efforts.

2. How many competitions for program grants have occurred since competition went into effect in 1996? In how many of these competitions were there more than one competitor for a grant? Please identify all competitors in which more than one competitor existed. List the incumbent program, the name and address of the competitor, and the results of the competition.

One round of competition has occurred each year since the competition for FY1997 grants – for a total of seven. The chart below shows service areas for which LSC received multiple applicants, the names of the applicants, and the applicant that submitted the successful bid. Note: The first LSC competition was for calendar year 1997 grants.

Key to Service Area Codes: Basic Field General = state code + number
Basic Field - Migrant = M + state code
Basic Field - Native American = N + state code + number

Grant Year	Service Area	Applicant Names	Successful Competitor
1997	PA-1	Delaware Valley Legal Services (New Applicant) Philadelphia Legal Assistance Center (LSC Grantee)	PLA
1997	PA-3	Delaware Valley Legal Services (New Applicant) Delaware County Legal Assist Assoc. (LSC Grantee)	DVLS[5]
1997	PA-4	Delaware Valley Legal Services (New Applicant) Bucks County Legal Aid Society (LSC Grantee)	BCLAS
1997	PA-12	Delaware Valley Legal Services (New Applicant) Legal Aid of Chester County (LSC Grantee)	LACC
1997	PA-18	Delaware Valley Legal Services (New Applicant) Montgomery County Legal Aid Services	DVLS[1]
1997	MPA	Delaware Valley Legal Services (New Applicant) Philadelphia Legal Assistance Center (LSC Grantee)	PLA
1997	MAZ	Community Legal Services (LSC Grantee) Pinal & Gila Counties Legal Aid Society (LSC Grantee)	CLS
1997	NJ-12	Ocean-Mommouth Legal Services, Inc (LSC Grantee) Law Office of Lynn A Kenneally (New Applicant)	OMLS
1997	MNJ	Camden Regional Legal Services, Inc (LSC Grantee) Law Office of Lynn A Kenneally (New Applicant)	CRLS
Grant Year	Service Area	Applicant Names	Successful Competitor
1997	CA-2	Jones & Kramer, LLC(New Applicant) Greater Bakersfield Legal Assistance, Inc (LSC Grantee)	GBLA
1997	CA-4	Legal Aid Foundation of Long Beach (LSC Grantee)) California Legal Foundation (New Applicant)	LAFLB
1997	CA-5	Legal Aid Foundation of Los Angeles (LSC Grantee) California Legal Foundation (New Applicant)	LAFLA
1997	CA-9	Legal Services Prog. for Pasadena & San Gabriel-Pomona Val. (LSC Grantee) California Legal Foundation (New Applicant)	LSPPSGP
1997	CA-15	Leroy George Siddell (New Applicant)	

[5] This applicant withdrew after being awarded the grant. The grant was ultimately awarded to the other applicant.

		California Rural Legal Assistance ((LSC Grantee)	CRLA
1997	CA-21	Leroy George Siddell (New Applicant) Tulare/Kings Counties Legal Services (LSC Grantee)	TKCLS
1997	CA-7	Channel Counties Lgl. Svcs. Association (LSC Grantee) Oxnard Legal Clinic, Inc (New Applicant)	CCLSA
1997	MCA	California Rural Legal Assistance (LSC Grantee) Oxnard Legal Clinic, Inc (New Applicant)	CRLA
1997	WY-1	Legal Aid Services, Inc. (LSC Grantee) Wind River Legal Services, Inc (LSC Grantee) Legal Services for Southeaster Wyoming (LSC Grantee)	WRLS
1997	WY-2	Legal Aid Services, Inc (LSC Grantee) Wind River Legal Services, Inc (LSC Grantee) Legal Services for Southeaster Wyoming (LSC Grantee)	WRLS
1997	WY-3	Legal Aid Services, Inc (LSC Grantee) Wind River Legal Services, Inc (LSC Grantee) Legal Services for Southeaster Wyoming (LSC Grantee)	WRLS
1997	NWY-1	Legal Aid Services, Inc (LSC Grantee) Wind River Legal Services, Inc (LSC Grantee)	WRLS
1997	MWY	Legal Aid Services, Inc (LSC Grantee) Wind River Legal Services, Inc (LSC Grantee)	WRLS
1997	MMI	Legal Services of Southeastern Michigan (LSC Grantee) Legal Services of Eastern Michigan (LSC Grantee)	LSSM
1997	DC-1	Neigh. Lgl. Svcs. Prog. of the Dist. of Col. (LSC Grantee) Lawrence & Associates Legal Group (New Applicant)	NLSPDC
1997	CO-4	Colorado Rural Legal Services, Inc. (LSC Grantee) Pueblo County Legal Services, Inc (LSC Grantee) Pikes Peak Legal Services (LSC Grantee)	CRLS
1997	UT-1	DNA People's Legal Services, Inc (LSC Grantee) Utah Legal Services (LSC Grantee)	ULS
1997	TN-4	Johnson & Settle, P.C. (New Applicant) Memphis Area Legal Services, Inc (LSC Grantee)	MALS
1998	MNY	Farmworkers Lgl. Svcs. of New York (Applicant Withdrew) Legal Aid Society of Mid-New York (Incumbent)	LASMNY
Grant Year	Service Area	Applicant Names	Successful Competitor

1998	NOR-1	Oregon Legal Services (Incumbent) Native Amer. Prog. Dba Northwest Center for Indian Law	OLS
1999	CA-6	Legal Aid Society of Alameda County (Incumbent) Volunteer Legal Services Corporation (New Applicant)	LASAC
1999	MI-3	Wayne County Neighborhood Legal Services (Incumbent) Legal Aid and Defender Assoc., Detroit (New Applicant)	LADA
1999	NM-4	Northern New Mexico Legal Services (Incumbent) Justice, Inc (New Applicant)	NNMLS
1999	OH-9	Butler Warren Legal Assistance Association (Incumbent) Legal Aid Society of Cincinnati (LSC Grantee)	LASC
2000	AZ-3	Pinal & Gila Counties Legal Aid Society (LSC Grantee) Community Legal Services Inc. (Incumbent)	CLS
2000	MAZ	Pinal & Gila Counties Legal Aid Society (LSC Grantee) Community Legal Services (Incumbent)	CLS
2000	AZ-5	Pinal & Gila Counties Legal Aid Society (LSC Grantee) Southern Arizona Legal Aid Society (LSC Grantee)	SALA
2000	NAZ-6	Pinal & Gila Counties Legal Aid Society (LSC Grantee) Southern Arizona Legal Aid Society (LSC Grantee)	SALA
2000	CA-25	Legal Aid of the Central Coast (Incumbent) Legal Svcs Found. of Monterey Bay Area (New Applicant)	LACC
2001	CA-30	Legal Services Program for Pasadena & San Gabriel-Pomona Valley (LSC Grantee) San Fernando Valley Neigh. Legal Svcs (LSC Grantee)	SFVNLS
2001	VA-15	Southwest Virginia Legal Aid Society (LSC Grantee) Legal Aid Society of the New River Valley (LSC Grantee)	SVLAS
2002	LA-10	Southwest Louisiana Lgl.Svcs.Society (LSC Grantee) Acadiana Legal Services Corporation (LSC Grantee)	ALSC
2002	TX-15	Texas Rural Legal Aid (LSC Grantee)	TRLA

		Legal Aid of Central Texas (LSC Grantee)	
2002	MI-1	Legal Services of Southern Michigan (Incumbent) Wayne County Legal Services (New Applicant)	LSSM
2002	MI-3	Legal Aid and Defender Assoc. of Detroit (Incumbent) Wayne County Legal Services (New Applicant)	LADA
2002	MI-4	Legal Services of Eastern Michigan (Incumbent) Wayne County Legal Services (New Applicant)	LSEM
2002	MI-5	Legal Services of Southern Michigan (Incumbent) Wayne County Legal Services (New Applicant)	LSSM
2002	MI-6	Lakeshore Legal Aid (Incumbent) Wayne County Legal Services (New Applicant)	LLA
2002	MI-7	Oakland Livingston Legal Aid (Incumbent) Wayne County Legal Services (New Applicant)	OLLA

Since competition for LSC program grant began in 1996, in how many cases did an incumbent LSC grantee lose to a program which had never received a grant from LSC? Please identify all such competitions by the name and address of both the incumbent program and the successful challenger and the date the grant was awarded.

There were two competitions in which an incumbent LSC grantee lost to an applicant that had never received a grant from LSC.

a. Competition for calendar year 1997 funding:
The LSC incumbent grantee for service area PA-3, Delaware County Legal Assistance Association and PA-18, Montgomery County Legal Aid services lost to an applicant that had never received a grant from LSC. The LSC president awarded both service areas to Delaware Valley Legal Services (DVLS) a law partnership established by Dessen, Moses and Sheinoff (1814 Chestnut Street Philadelphia, PA 19103.) However, DVLS withdrew before the beginning of the grant term.

b. Competition for calendar year 1999 funding:
The LSC incumbent grantee for MI-3 was Wayne County Neighborhood Legal Services. The grant was awarded to the other applicant, Legal Aid and Defender Association, Detroit (LADA). LADA had never received a grant from LSC.

3. Since competition began in 1996, how many complaints has LSC received from all sources regarding its administration of competition. Please identify each complaint by listing the complainant, the date of the complaint, the name of the incumbent program in the competition, the nature of the complaint, and LSC's determination as to the validity of the complaint.

The LSC Office of Program Performance provides three avenues through which competitive grant applicants can raise questions, issues, and complaints about the competitive grants process. We survey applicants who send in a notice of intent to compete, but did not follow up by

sumitting an application. We have an applicant service desk to respond to applicant questions and concerns. We host an "Applicant Information Session," a telephonic conference for questions and issues. We have not received a complaint from any of these avenues or in any other fashion.

In addition we have several inquiries from members of Congress concerning LSC's competition process, *See Attachment H.*

4. Since Public Law 104-134 was passed by Congress in 1996 requiring the "LSC to implement a system of competitive award of grants and contracts," how many new recipients have been funded from the private sector? In that same time period, how many pre-existing programs have continued to receive funding? And, how many recipients that were formed by previous LSC recipients have been funded?

In 2002 we are funding 168 basic field – general programs.[6] Of those 168 grantees:

- 9 are new grantees. These are grantees that were not funded by LSC in 1996. All are non-profit law firms. One existed prior to being funded by LSC. The others are non-profits that were created, in order to apply for LSC funding.
- 96 are "pre-existing" grantees, grantees that existed in 1996 and serve the same geographic area that they served in 1996.
- 63 are grantees that have been formed since 1996 from previous LSC grantees or whose service areas have changes.

5. If prior LSC recipient staff were involved in setting up a new grant recipient program, did a prior LSC recipient maintain any level of control over the newly formed entity receiving the LSC funds?

As discussed in the answer to H4, more than 100 legal services programs have merged or been incorporated into new entities. Based on our experience, most new LSC entities that are formed through merger include some Board members and staff from the "prior" program. Since most former LSC recipients no longer exist, it is impossible to speculate on the nature of any "control" a prior entity would have on the new LSC grantee. We would be happy to provide the Committee further information on this issue after receiving some clarification on the specific nature of the requested information.

6. Has the total number of LSC recipients increased or decreased since competition began? Can you describe the specific criteria and standards used by LSC in order to create a larger service area? Is this criteria recorded in writing? If so, please provide the written criteria to the Subcommittee. If not, as the President of the Corporation and long-term Board member, do you not find a problem with the potential for great subjectivity to exist in the awarding of millions of dollars in federal funds?

---

[6] This figure does not include grantees that only receive Native American grants -- two. It does not include programs currently receiving close out grants (e.g. the three in North Carolina.)

In November 2001, LSC published and has since widely distributed "LSC State Planning Configuration Standards," a document that provides specific criteria to guide LSC management in determining the optimum configuration of service areas. As President, I am fully satisfied that the process and standards in place support LSC's Congressional mandate to determine service areas and make grants to serve the civil legal needs of poor clients. *See Attachment H.*

7. Currently, how many states are served by a single LSC recipient? How does the number of current statewide programs compare to the number of statewide programs before the competition initiative?

There are currently 25 states and U.S. territories that are served by a single LSC-funded entity. Prior to competition, there were 19 states and U.S. territories that are served by a single LSC-funded entity.

8. Does LSC consider the impact that its funding decisions would have on the delivery of services to clients that are prohibited from getting services? And, is it a factor in reaching funding decisions? For example, does LSC formally or informally consider how consolidating three programs in Texas will affect an illegal immigrant's ability to obtain legal services through a non-LSC recipient?

LSC does not consider the availability of services to "illegal immigrants" when making determinations as to service areas. The discussion concerning services to all residents of a state, including those not qualifying under LSC regulations, is often explored by the key stakeholders (and other funders) at the state level. LSC grantees are required to communicate with other interested parties in each state, such as IOLTA funders, bar leaders, members of the judiciary, and other legal services providers, in order to make well-considered recommendations to LSC about the highest and best use of the federal dollars to serve eligible clients.

9. What evidence does LSC rely upon to support a statewide service area will increase the possibility of obtaining competition?

LSC's decision to create a statewide service area is not determined in order to enhance competition. Given the fact that millions of Americans lack assistance with civil legal problems, LSC's overriding goal is to maximize the federal investment to ensure the largest number of clients within a state get high-quality and appropriate service. Once the appropriate configuration decisions for a state have been made, LSC is active in promoting and fostering competition for all service areas.

10. What is the length, in number of years, of the typical LSC competitive grant? Has the number of programs receiving longer grants increased in recent years? If so, why? Please provide to the Subcommittee the number of grant years for each current recipient beginning with the January 1, 2002 calendar year awards.

The length of LSC grants varies from less than one year to three years. In 2000, 2001 and 2002 the median grant length was 2 years. The number of programs receiving three year grants increased by eleven from calendar year 2001 to calendar year 2002. Three-year funding was awarded to nineteen programs for service areas in six states for calendar year 2001 grants.

Three-year funding was awarded to thirty programs for service areas in eleven states for calendar year 2002 grants.

Three-year funding is awarded in states that have made significant progress towards development of a comprehensive, integrated delivery system. All LSC grantees, however, must demonstrate they are able to meet the standards established in LSC's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services.

See the following pages for charts that show the number of grant years for each current recipient beginning with the January 1, 2002 calendar year awards. Chart (A) shows FY 2002 funding term decisions for recipients that submitted competitive grant applications. Chart (B) shows FY 2002 funding term decisions for recipients that submitted grant renewals.

11. How does LSC document a decision to award a grant to a new recipient if there had previously been more than one applicant for a service area? Please provide such written documentation to the Subcommittee.

Each proposal is evaluated by an LSC Office of Program Performance (OPP) staff member based on the ABA Standards for the Provision of Civil Legal Services, and the LSC Performance Criteria.

Capability assessment reports are then prepared by staff based on a review of applicant information at LSC, telephone interviews with members of the bar, the bench, applicant staff, community organizations, and other funders. An on-site visit is conducted to assess the applicants' capacity for providing high-quality legal services, if determined to be necessary by the OPP Director. A review team consisting of one or more LSC staff members and one or more consultants with experience in legal services delivery conducts the on-site visits.

Staff documents its funding recommendation using form MA-3 (Multiple Applicant Service Area Recommendation Form). Staff's recommendation is reviewed and forwarded directly and simultaneously to both the LSC President and Vice President for Programs. Both officers give their approval for every funding decision made pursuant to competition.

In addition, a review panel, required by 45 CFR Part 1634, is convened. The review panel evaluates the competing applications, reviews other materials submitted with the applications, and reviews the capability assessment report. After full deliberation, the Review Panel documents its funding recommendation using form MA-2 (Multiple Applicant Service Area Recommendation Form). The written recommendation is submitted directly to the LSC President along with the LSC staff recommendation. The LSC President makes the funding decision with consideration of the information from the review panel and LSC staff.

See *Attachment H* for a sample capability assessment report and related documents.

12. Describe the state planning efforts in Texas. Are all funding decisions now finalized? Please provide all documentation supporting the decisions to reconfigure the service areas in Texas and Louisiana, including all memoranda, letters, and reports relevant to the funding decisions.

In addition, it is our understanding that the Texas Rural Legal Aid Society (TRLA) will now consist of a group of consolidated programs and is, by far, the largest legal aid provider in the state. As discussed at the Subcommittee's hearing, TRLA was the program which linked their home page to the "TaxRebatePledge.org" website listing "Organizations Fighting Against Bush's Agenda." Of course, TRLA's website is paid for with federal funds. During the hearing, you testified to the Subcommittee that you were not aware of this website but would investigate it. Several weeks have passed since the hearing, please advise what actions the Corporation has taken to investigate this matter and provide a complete and detailed explanation to the Subcommittee on this improper use of federal funds. Please also advise why TRLA is involved in partisan political activities and is listed on a website which clearly states it opposes President Bush and his agenda.

Texas submitted a state plan to LSC in October 1998. In April 1999, LSC rejected the Texas plan. Texas state planners were instructed to submit a new plan on October 1, 1999. As part of the planning process, regional meetings were held in three locations in late 1999. A broad and inclusive group of stakeholders was invited to those meetings. The October 1999 plan was basically a report on how the Texas planners intended to develop a plan for an integrated delivery system with a final plan to be drafted in December 1999. The December 1999 plan was delayed after the Texas Supreme Court's announcement that it would hold a public hearing on the issue of civil legal services for the poor on January 27, 2000.

On May 3-4, 2000 the planners convened a "Summit on Realizing Justice." An action plan was adopted that called for increased involvement on the part of private attorneys in the lives of low-income persons; greater use of technology to improve access and quality; the creation of an Access to Justice Commission; and efforts to increase resources. There were some other planning accomplishments in the summer of 2000, but they do not appear to be part of a comprehensive plan. Also during this period, several programs began to talk about merger.

On January 22, 2001, the Texas Legal Services State Planning Group for the Delivery of Legal Services to the Poor unanimously endorsed a new configuration plan that consisted of three regional programs. This new map created a delivery system that anchors each region with an urban community-Austin/San Antonio, Dallas/Fort Worth, and Houston. All three regions are comparatively equal in terms of poverty population ranging from a low of 894,085 to 1,363,009. The number of private attorneys in each region is comparatively equal, as is the number of legal services staff.

The new configuration plan was forwarded to LSC in February 2001. LSC was informed that the plan had the unanimous support of the Texas State Planning Committee. Other individuals and organizations, including the Texas Equal Access to Justice Foundation, voiced their support for the plan.

Funding decisions for all three programs in Texas are finalized. Each program received a three-year grant award.

See Attachment H for all documentation supporting the decisions to reconfigure the service areas in Texas and Louisiana, including memoranda, letters, and reports relevant to the funding decisions.

The "TaxRebatePledge.org" is a website that identifies Texas Rural Legal Aid as an organization that is opposed to the Bush agenda. We have contacted David Hall, Executive Director, of TRLA and he reported to us that TRLA had no knowledge of this website adding their name. TRLA did not authorize this group to use its name or list it as an opponent of the Bush administration tax agenda. Neither LSC nor TRLA has control over this independent website.

13. Critics have cited problems with the State Planning effort in Michigan. Can you describe that process, and what occurred? We are aware that the state bar in Michigan opposed the initial LSC plan in early 2001, and then LSC retreated from its initial decision regarding new service areas. 'On what factors did the LSC base its original decision? Was

the procedure used to determine new service areas in Michigan the same procedure used in other states? If it was different, what was the difference?

If the original Michigan decision was based on the standard process conducted by LSC staff, why did LSC change its position? Please provide to the Subcommittee all memoranda, letters, reports, or other documents that involve the state planning process in Michigan. This request includes all correspondence to any LSC recipient in Michigan or any planning group, regarding state planning and all documentation involving how LSC reached its initial decision, that was not enforced.

LSC's final configuration decision for our programs in Michigan followed numerous and extensive conversations about the optimal legal services delivery system in Michigan. It also reflected our best thinking based on several years of work with the state's planners and with other members of the Michigan state justice community. We designed a five-program configuration structure that, in our estimation, most effectively promoted consistency of client access and relative equity in the availability of the full range of client service capacities throughout the state. We believe that the LSC configuration plan will strengthen the coordination of legal services resources in the state so clients have greater access to representation. We also anticipated that our plan would result in a real and meaningful integration of state-based advocacy and support the development of common technological capacities. Finally, a five-program delivery system in Michigan would minimize, over the long-term, unnecessary administrative costs that often occur in states where one or more service areas contain only a small number of clients.

On June 29, 2001, the LSC Board of Directors met in Portsmouth, N.H., and reached an agreement with Michigan stakeholders to delay the implementation of the new five-program structure for one year. The Board made this decision, consistent with our State Planning standards, after careful consideration and serious debate; the decision was made after several key stakeholders in Michigan conveyed their concerns about not being properly included in the planning process. As part of LSC's ongoing efforts to cultivate statewide partnerships, the Board approved the one-year delay to ensure that all Michigan stakeholders are given a voice in the process and to maximize the cooperative potential of all stakeholders once reconfiguration takes place. *See Attachment H* for copies of requested documents.

14. During the hearing, the 1997 Philadelphia case in which the private law firm of Dessen, Moses & Sheinhoff placed a competitive bid to set up a new, more efficient program but was forced to withdraw its bid because of pressure from the existing program. Part of the pressure the Dessen firm experienced was picketing outside their offices, as reported by *The Legal Intelligencer* on February 25, 1997 and March 19, 1997. One of those picketing the Dessen bid was Roger Ashodian, President of the Delaware County Legal Assistance Agency. It was reported that he is the same attorney who had previously been sanctioned by the court in 1992 for unethical tactics to increase litigation costs in a lawsuit filed against a nonprofit group that provided affordable housing for the poor. At the hearing you testified to the Subcommittee you did not have any recollection of this case or Mr. Ashodian and did not know if he was still employed as a legal services attorney. Please advise what your follow up investigation has determined about the status of employment of Mr. Ashodian. In addition, please provide a report of this specific bid competition. Why

were the LSC-funded attorneys not sanctioned, even though they clearly violated the statute which prohibits picketing?

As of January 1, 2002, Delaware County Legal Assistance Agency was not an LSC grantee (or subgrantee). LSC management has no contact with this former grantee, and we do not know the employment status of Mr. Roger Ashodian. No determination was made that Mr. Ashodian's actions were in violation of any LSC regulation or applicable statute. LSC has not received any complaints concerning this matter and has not investigated the issues raised in your question. The LSC grantee now serving the counties of Buck, Chester, Delaware, and Montgomery is Legal Aid of Southeastern Pennsylvania. The documents concerning this competition have been archived. We have requested copies of these materials and will make them available to the committee as soon as possible.

I. Questions Pertaining to the Case Over Counting Issue

1. It is the Subcommittee's understanding the Corporation recently submitted your official case handling statistics to the House Appropriations Committee. Please advise the 2001 official case counting statistics. How many cases were opened in 2001? How many cases were closed in 2001? What is a breakdown, by category of the types of cases handled in 2001?

As of December 31, 2001, there were 310,448 open cases. 1,014,113 cases were closed in 2001. *See Attachment I.*

2. Please advise if senior management at the Corporation is taking steps to extend current employment contracts. If so, under what authority and for what reasons are such actions being taken? What types of "parachute" provisions are currently being considered and made part of these contracts? Is this action inappropriate in light of the fact President Bush just announced five of the new LSC Board members and it is traditionally the function and prerogative of the sitting President's Board to appoint officials of the Corporation?

At LSC's last Board meeting, held on April 5, 2002, the LSC Board authorized LSC President John Erlenborn to grant 6-month extensions to the employment contracts of Victor Fortuno, Randi Youells, and Mauricio Vivero. These three individuals serve as Vice Presidents and corporate officers of LSC. *See attachment I.*

3. Section 1008(c) of the Legal Services Corporation Act states in part "The Corporation shall publish an annual report which shall be filed by the Corporation with the President and Congress." Please advise the Subcommittee if the LSC has prepared and submitted to the President and Congress annual reports, as required by the Act, for LSC program years 1996 through 2001. If so, please provide us with a copy of such reports.

LSC management and the Office of Inspector General make semi-annual reports to Congress. In addition, LSC management also sends to Congress and the President a yearly budget request as well special reports, factbooks, and other publications. *See attachment I.*

4. The "1997 Fact Book to Congress" was submitted by the LSC and contained grossly inaccurate figures about the number of cases actually handled by the grantees, which led to the GAO's investigation and report in 1999. When was the last Fact Book submitted to Congress? Please submit to the Subcommittee the Fact Books for Fiscal Years 1997 through 2001. Did past case counts submitted to Congress include counting of both open and closed cases or just closed cases? Prior to 1996, did LSC report to Congress just closed cases or the total number of open and closed cases handled during the applicable fiscal year? If there was a change after 1996, what motivated such a change in how case reporting statistics were reported to Congress?

Prior to 1996, LSC factbooks did not report both closed and open cases. The 1997 report to Congress included both open and closed cases in order to provide a more complete picture of the work of LSC grantees. As reported by the LSC Inspector General in testimony on September 29, 1999, open cases are irrelevant to a discussion of caseload levels as a basis for federal funding.

Open cases are defined as those open on December 31 of a particular year. Cases open at the end of one year are usually closed during the next calendar year, because most cases involve brief service and advice. If open cases are counted as workload in year 1 and then counted as cases closed in year 2, then those cases would be inaccurately double counted *See Attachment I.*

handling the matter is via a class action, but that, due to the LSC restrictions, he is unable to so handle the matter.

Plaintiffs claim that the program integrity regulation affects how a program may fund its litigation, and that the requirement to maintain an "objectively" separate legal program housed in a separate physical facility using non-LSC funds violates the First Amendment rights of LSC grantees, private donors, legal services lawyers and indigent clients.

Plaintiffs also offer as an example the New York Foundation, a private charitable foundation. Plaintiffs claim that the New York Foundation, working in conjunction with South Brooklyn Legal Services, is unable to provide legal representation to persons who want to operate qualified day care centers in economically disadvantaged communities due to the ban on class actions and the ban on collecting court-ordered attorneys' fees. LSC's response to the papers filed by the Brennan Center is due on Friday May 3, 2002. LSC is unaware of any other pending litigation involving the restrictions.

2) What is the relationship, if any, of the Brennan Center to the LSC headquarters in Washington? Has the Corporation or any LSC staff member provided assistance to the Brennan Center, or any of its employees, attorneys, or agents, in any case or matter involving the Corporation? Does the Brennan Center participate in any LSC sponsored committees, or other stakeholder groups involved with LSC?

The Brennan Center has no relationship to LSC. In the context of the *Dobbins* lawsuit, LSC and the Brennan Center are litigation adversaries. In the context of the 1626 Negotiated Rulemaking, the Brennan Center is a member of the Working Group and LSC and the Brennan Center (and each of the other participants) maintain a professional relationship as stakeholders in the process. In the context of the Freedom of Information Act, the Brennan Center occasionally files FOIA requests for LSC records. In such cases, LSC processes those requests in accordance with FOIA and LSC's Freedom of Information regulation, 45 CFR Part 1602.

3) Please provide the Subcommittee with a specific accounting of the hours and actual costs to the Corporation to defend the congressional restrictions in *Legal Services Corp. v. Velazquez*?

LSC does not keep task-specific time records of its in-house staff and, therefore, is unable to calculate the amount of LSC attorney and staff time and resources spent on *Legal Services Corporation and United States of America v. Carmen Velazquez, et al.*, Civil Action No. 97-CV-182 (E.D.N.Y.). According to our billing file, LSC's outside counsel (attorney and paralegal time) spent approximately 2358 hours defending LSC in this matter.

4) The LSC website lists Board Resolution number 2001-009 as delegating authority to the Chairman of the LSC Board of Directors the power to appoint a Board member to a group called "Friends of the Legal Services Corporation." Please advise the tax classification status of the "Friends of the Legal Services Corporation." Who established this group and what is their explicit purpose? Has any staff of the LSC given support or the promise of future support to this group? What persons and groups comprise the "Friends. of the LSC?" What is the relationship of the Corporation to this group? Have any federal funds been spent, in any way, to assist with the establishment of this group?

J. Questions Pertaining to Litigation Against the LSC and the Brennan Center

1) The Subcommittee is aware that the Brennan Center, which operates out of New York University Law School, is the driving force behind the U.S. Supreme Court case of *Legal Services Corp., v. Velazquez,* which sought to overturn the 1996 congressional restrictions. In addition, the Brennan Center is now again seeking to overturn the congressional restrictions by sponsoring the case *Dobbins v. Legal Services Corp.* Can you describe this lawsuit and the remedy it seeks? Please provide to the Subcommittee copies of all pleadings in this case. In addition, please advise if there are any other pending court cases involving the restrictions.

On December 14, 2001, on behalf of a handful of Plaintiffs, the Brennan Center for Justice and the law firm of Kaye, Scholer, Fierman, Hays & Handler filed a Complaint, Motion for Preliminary Injunction, Motion to Consolidate this matter with *LSC v. Velazquez*, Civil Action No. 97-CV-182 (E.D.N.Y.), and a supporting 70-page memorandum of law. In this matter, Plaintiffs seek to: (1) bolster their standing in *Velazquez* by adding new plaintiffs who can make "as applied" challenges to the program integrity guidelines; and (2) challenge the 1996 restrictions (with particular emphasis on the class actions restriction) and the program integrity regulation.[7]

Plaintiffs challenge the remainder of the 1996 restrictions not addressed by the United States Supreme Court in Velazquez, including the program integrity regulation (45 CFR Part 1610.8), the regulation prohibiting participation in class actions (45 CFR Part 1617), the regulation prohibiting notifying prospective clients of their legal rights and then offering to represent them (45 CFR Part 1638), and the regulation prohibiting claiming, or collecting and retaining, court-ordered attorneys' fee awards (45 CFR Part 1642).

Plaintiffs claim that the program integrity regulation is unduly burdensome, placing undue physical and financial burdens on programs. Plaintiffs claim that as a result of not being able to comply with the program integrity regulation to run and house a separate program to engage in "prohibited activities," outside attorneys who wish to do *pro bono* work in conjunction with the program are limited in how they may proceed. For example, Plaintiff David Dobbins, a lawyer with a large New York City firm, claims that, in one particular case, the most effective means of

[7] This case arises out of the *LSC v. Velazquez,* Civil Action No. 97-CV-182 (E.D.N.Y.). After the Supreme Court issued its opinion in *Velazquez*, 531 U.S. 533 (2001), Plaintiffs brought the matter back to the United States District Court for the Eastern District of New York. On May 8, 2001, counsel for Plaintiffs wrote to Judge Block, who presided over the original action. In their letter, Plaintiffs requested a status conference to discuss the impact of the Supreme Court's decision. Plaintiffs maintained that a conference was necessary to discuss "as applied" challenges to the regulation at issue, specific facts and costs associated with implementing the Supreme Court's decision, and a further discussion of the constitutionality of the regulation at issue.

LSC filed a responsive letter with the court on May 18, 2001, in which LSC took the position that the only issue left open by the Supreme Court's decision is whether a specific grantee is capable of mounting an "as applied" challenge to the 1996 Act and its implementing regulations and that there is no real need to revisit the legal issue of whether Plaintiffs can successfully mount a facial challenge to the restrictions. Judge Block held a status conference on June 26, 2001. To date, Judge Block has taken no action regarding this matter.

On December 14, 2001, the Brennan Center filed a new matter, *Dobbins, et al. v. Legal Services Corp.*, Case No. 01-CV-8371, described above.

How much money have they provided in the past to the Corporation and how much money are they anticipated to provide in FY 2002?

The explicit purposes of the organization are to:

(1) Raise funds to support all aspects of the missions of the Legal Services Corporation ("LSC");

(2) Educate the public as to the wisdom and need (a) to provide equal access to the system of justice in our nation for individuals who seek redress of grievances; (b) to provide high-quality legal assistance to those who would be unable to afford adequate legal counsel; and (c) to provide legal counsel to those who face an economic barrier to adequate legal counsel;

(3) Acquire, hold and manage assets for use by LSC where doing so may result in lower costs or greater efficiencies for LSC; and

(4) Pursue any other purposes which a non-profit corporation organized under the Act described in Section 501(c)(3) of the Code is legally entitled to pursue.

A few LSC staff members have provided support to the establishment of FoLSC: John McKay, past President of LSC, John N. Erlenborn, current LSC President; Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary; David L. Richardson, Acting Vice-President for Administration, Comptroller & Treasurer of LSC; Lynn Bulan, Sr. Assistant General Counsel of LSC. No promises of future support to FoLSC have been made by any LSC staff members.

FoLSC is comprised of a Board of Directors, of which the current members are: Thomas F. Smegal, Jr. (a member of the current LSC Board of Directors); John W. Martin, Jr. (former General Counsel of the Ford Motor Company and current faculty member at the Cornell Law School); Victor M. Fortuno (LSC Vice President for Legal Affairs, General Counsel & Corporate Secretary); and David L. Richardson (LSC Acting Vice President for Administration, Comptroller & Treasurer). For a period of time during his tenure as LSC President and for a short while thereafter John McKay (now United States Attorney for the Western District of Washington) also served on the Board. There are currently two vacancies on the Board of FoLSC.

FoLSC is a supporting corporation for LSC, with the express supporting purposes outlined above. FoLSC's activities thus far have been its own establishment, limited fundraising, identifying and securing a permanent home for LSC (which will, among other benefits, stabilize LSC's occupancy costs). If this project is completed as anticipated, FoLSC will own a property that will house LSC – via a long-term lease. FoLSC will initially be LSC's landlord.

In light of very substantial anticipated increases in occupancy costs, LSC expended $22,873 to explore means of controlling those costs long term and developing the most appropriate

mechanism for doing so. Once LSC decided on the most feasible option, the creation of FoLSC, $137,761.64 were advanced to FoLSC to cover costs and expenses of pursuing other housing options.[8] FoLSC will reimburse these funds by paying $164,502.69 to LSC no later than September 30, 2001, from monies received from the Bill and Melinda Gates Foundation.[9]

To date, FoLSC has not provided any monies to LSC. In FY 2002, it is not anticipated that LSC will provide FoLSC with any money other than the $164,502 noted above and any additional advances of up to the $140,000. Beyond FY 2002, FoLSC anticipates paying any penalties for which LSC may be liable to terminate its current lease for office space and for LSC's move to its new headquarters. LSC will also greatly benefit financially from occupancy cost savings realized over the term of its new lease with FoLSC.

See Attachment J.

---

[8] In late 2001, FoLSC attempted to acquire a site at 500 New Jersey Avenue, NE, to construct a building to house LSC. However, because the site was formerly a gas station, FoLSC had appropriate environmental testing of the site done and, partially due to the environmental findings and the fact that the property would have a number of potential environmental liability issues associated with it, FoLSC did not complete this transaction.

[9] The Bill and Melinda Gates Foundation made a $4 million grant to FoLSC for the express purpose of purchasing a permanent home for LSC. (Exhibit – Grant Letter).

K. Questions Pertaining to Class Action Lawsuits

1) House Report 106-680, which accompanied the FY2001 LSC appropriations legislation, included the following language: "The Committee also reminds the Corporation that its grantees are prohibited by section 504(a)(7) of P.L. 105-119 from participating in class action suits and directs the Corporation to ensure its grantees comply."

With respect to this very specific congressional directive urging the Corporation to enforce the ban on class actions, please describe specifically what steps were taken by LSC to comply. Was the House Report 106-680, and specifically the language involving the directive on class action lawsuits, ever discussed by the LSC Board of Directors? If so, please provide the date of such discussion and either a transcript, recording or meeting minutes of such discussion.

Section 504(a)(7) of the 1996 Appropriations Act (and carried forth in subsequent appropriations act, including the current one) prohibits a recipient of LSC funds from "initiat[ing] or participat[ing] in a class-action suit." This prohibition was adoptied in LSC's regulations at 45 CFR Part 1617 (61 FR 63754, December 2, 1996). As noted in section 1617.1 of those regulations, "[t]his rule is intended to ensure that LSC recipients do not initiate or participate in class actions." This regulation has not been amended since that time and stands in full force. LSC believes that the regulation is fully consistent with the statutory requirement, clear and well understood by LSC grantees. LSC does not believe that any amendment to this regulation is necessary nor has the language involving class actions been further discussed by the LSC Board of Directors since the regulation was adopted.

2) Please provide a listing of any enforcement action taken by the Corporation against any LSC-funded program which initiated or participated in a class action since the restriction took effect in 1996. Please identify the program, the parties to the class action, the court involved, and the case number. Please also summarize what sanctions were imposed on the program involved in the class action. If there were no sanctions imposed, please explain the rationale of LSC for not imposing sanctions for violation of this statutory restriction.

LSC has not taken enforcement action against a LSC-grantee for violation of this restriction.

3) Please provide a list of all complaints, from all sources including Members of Congress, concerning LSC-funded programs initiating or participating in class actions and/or representative actions since August 1, 1996. Please provide a list of the complainant, the program involved, the parties to the lawsuit, the court involved, and the case number of the lawsuit. In addition, please provide a summary of both the investigation and final decision of the Corporation.

LSC has recevied inquiries from Members of Congress and private citizens concerning allegations related to the class-action restriction. *See Attachment K* and See answer to Question K4 and list of on-site reviews conducted by LSC since 1998, Answer C5.

4) The LSC Inspector General issued Audit Report No. AU 02-01 in October 2001 examining the activities of LSC grantee Lane County Legal Aid Service, Inc. While the

emphasis of the report was on the extremely close working relationship between the grantee and the non-restricted program, Lane County Law and Advocacy Center, one of the IG's findings was that the grantee "allowed a full-time attorney to work on a class action suit for the other organization while in the grantee's office." What action has LSC taken to examine the costs associated with the use of a full-time LSC-funded lawyer for a prohibited class action? Has LSC taken any action with respect to the improper legal assistance being rendered by the LSC-funded program in a class action lawsuit?

LSC has not attempted to determine costs associated with the attorney's work on the class action suit. The OIG report states that the attorney was paid for his work on the class action suit by the Lane County Law and Advocacy Center (not an LSC grantee) even though he was considered a full time employee of the grantee (Lane County Legal Aid Service). The grantee's attorney charged the Advocacy Center about 160 hours between July 1, 1999 and June 30, 2001, for work on a class action suit. Over the two-year period this amounted to about seven hours a month, a small but not *de minimis* amount. The Advocacy Center paid the attorney for his work based on the time he recorded on timesheets.

Grantee management told the OIG that the attorney was considered a full-time employee, except that he was considered a part-time employee during any months that he also worked for the Advocacy Center. Grantee records listed the attorney as a full-time employee with no indication of part time status. The only documented indication of the attorney's temporary part time status was his time sheets and completed certifications required by Section 1635.3(d). The OIG obtained limited assurances that the grantee did not compensate the attorney while he was working on the class action suit. This assurance was based on discussions with grantee officials and the fact that the Advocacy Center and the grantee issued separate, pro-rated paychecks to the attorney for certain pay periods.

The LSC is working closely with Lane County Legal Aid Services to implement a corrective action plan to prevent future violations. The OIG report made a number of recommendations, which the grantee agreed to implement. The grantee provided the OIG an audit action plan addressing the corrective action that it planed to take. The OIG is currently evaluating the adequacy of the plan. When the review is completed, the OIG will refer the matter to LSC management for follow-up. This is the usual audit report follow-up process.

NATIONAL LEGAL AND POLICY CENTER
"Promoting Ethics in Government"
103 West Broad Street, Suite 620
Falls Church, Virginia 22046
703-237-1970, Fax 703-237-2090
www.nlpc.org, nlpc@nlpc.org

Legal Services Accountability Project

SPECIAL REPORT TO CONGRESS

July 2000

The LSC Case Over-Counting Scandal of 1999

SUMMARY

The purpose of this document is to provide an accurate and historical record of the Legal Services Corporation's (LSC) case over-counting scandal of 1999. It chronicles the scandal and the incredulous conduct of the Corporation's leadership (Board Chairman and/or Vice Chairman and/or Corporation President) and the Corporation's Inspector General from November 1997 through September 1999. In official reports and testimonies to Congress, these Corporation officials purposely:

- withheld important information about the over-counting during congressional budget deliberations which enhanced prospects for getting increased program funding for FY 1999 and FY 2000,
- misrepresented the scope, magnitude, and type of case over-counting problems after being caught trying to cover-up the problem, and
- provided inaccurate and incomplete descriptions of the laws and standards governing their responsibility to report serious problems to congressional appropriators and overseers.

The persistent efforts of the Congress, the media, public interest groups, and concerned citizens thwarted the dubious efforts of the Corporation officials. In April 2000, LSC had to admit the annual legal services program only produced 924,000 cases. This figure is substantially less than the 1.9 million cases LSC used to support requests for increased FY 1999 and FY 2000 funding. The American public also learned the program accomplished far less with taxpayer dollars, in terms of legitimate cases produced, than claimed by the Corporation anytime during the preceding 20 years.

Counting cases that never existed, counting single cases more than once, and counting other non-reportable issues such as classifying telephone calls as cases without providing any legal assistance or determining whether callers were eligible to receive assistance were among the chief reasons for the over-counting. Documentation acquired by past and present Corporation and OIG auditors, evaluators, and analysts prove the case reporting and over-counting problems were significant, widespread, deep-rooted, and longstanding.

The actions and statements of some Corporation and local program officials, according to some members of Congress and the public, may violate certain provisions of the LSC Act, the IG Act, and may also constitute fraudulent activity. In layman's terms, Webster's Dictionary defines fraud as "a deliberate deception practiced so as to secure unfair or unlawful gain".

Further details appear in the report and appendices, along with conclusions and recommendations on pages 11 and 12 of the report.

TABLE OF CONTENTS

A. NOTABLE LSC QUOTES

"I'm pleased this effort will not include a (formal) report."

- John McKay, LSC President, in a message to the LSC Inspector General on November 25, 1997 stating that he was pleased the IG decided not to publicly release a November 1997 report that contained, among other things, a conclusion that the Corporation's case statistics were unreliable and should not be used as a bulwark, as they had been, to support continuance of federally funding legal services.

"You are correct that the numbers provided to Congress were inaccurate, ... in February 2000 ... we will make our public statements ... and also allow management to fix the problems we observed..."

- Eduoard Quatrevaux, LSC Inspector General, acknowledging, in writing, to members of his staff on September 23, 1998, that the Corporation grossly overstated program accomplishments by claiming in a report to Congress that the 1997 program served 1.9 million clients. By keeping this materially significant information from Congress, the IG allowed Congress to unknowingly use bloated case numbers as it made the decision to approve a $17 million appropriation increase for LSC's FY 1999 program.

"...That is strictly an accounting of the number of cases reported by our recipients. They report them to us and we report them back to Congress ... What we are trying to capture is the service that we provide to eligible clients so that you and others in the Congress can determine what they are getting for the investment ... we are tightening up our reporting requirements. We do not anticipate a real significant change in the number of cases we handle ..."

- John McKay, LSC President, responding to a question from Rep. Tom Latham (R-Iowa) during the March 3, 1999, congressional budget hearing on how LSC got the number 1.9 million cases it reported to Congress.

"...My understanding that as a result of the tightened reporting requirements imposed by the CSR handbook ... we will be looking at approximately five percent reduction in caseload reports, overall magnitude."

- Douglas Eakeley, LSC Board Chairman, responding to a question from Rep. Latham during the March 3, 1999, congressional budget hearing on the magnitude of the case over-counting problem for the 1997 program.

"That is not accurate."

- John McKay, LSC President, responding to a question from Rep. Latham during the March 3, 1999, congressional budget hearing on whether 2/3 of about 149,000 open and closed cases reported by the San Francisco, Florida Rural, Northern Virginia, Houston, San Diego, an Miami legal services programs were invalid.

"We haven't completed the audit reports. No, I'm not suppose to under government auditing standards."

- Eduoard Quatrevaux, LSC Inspector General, responding to a question from Rep. Latham during the March 3, 1999 congressional budget hearing on whether he reported the case over-counting problem to Congress.

"The problem is not program-wide. It is limited to one discreet type of problem - referred after legal assessment."

- Eduoard Quatrevaux, LSC Inspector General, responding, March 1999, to a question from the staff of the House Committee on Government Reform and Oversight, about LSC's case over-counting problem.

"... his charge that we "cooked the books" was untrue ... Congressman Latham's criticism of the IG was also clearly unwarranted. At least three times, Congressman Latham was advised that the GAO auditing standards do not allow the release of preliminary data...we have been forced to respond to attacks...reinforced by grossly inaccurate information."

- John Erlenborn, LSC Board Vice Chairman, in a May 14, 1999 letter he sent to House Majority Leader Dick Armey (R-Tex.) and the entire House of Representatives which was highly critical of Congressmen Armey and Latham. Evidence subsequently acquired by Congress revealed that LSC's annual program produced only about 900,000 cases as opposed to the 1.9 million cases claimed by LSC in the 1999 budget hearing. The evidence also shows that GAO auditing standards allow the release of preliminary audit data to legislators (Appendix 3).

B. GLOSSARY OF IMPORTANT TERMS

Annual case service report. A compilation of all case activity during the annual calendar year period. It is required by the grant agreement with the Corporation. Local programs are required to inform the Corporation of how many cases are open at the end of the year and how many cases are closed during the year. Instructions for preparing this annual report appear in the Corporation's Case Service Report (CSR) Handbook and Grant Activity Reporting Instructions. The Corporation used the information provided in case service reports to inform the Congress what the program was accomplishing, in terms of cases produced, with annual appropriations. The Corporation also used these reports as evaluation factors in making competitive grant award decisions and to support requests for program funding from the Congress. Congress used the annual case report it received from the Corporation to make judgments on annual appropriations for the program.

Open case. Before a local program can open a case, it must first accept the applicant into the program as a client after determining that the applicant meets the eligibility requirements of the LSC Act and Corporation regulations. The applicant's legal issue must also be within stated program priorities and the case must also conform to the Corporation's case reporting standards. The vast majority of cases opened by local programs fall into the category of limited services (70-80 percent). Limited services cases are typically resolved in a relatively short period of time, many on the same day. They should be promptly closed and reported to LSC in the period the legal service was provided.

Closed case. Local programs close a case when the legal action on the client's case is completed. Annual case reports contain two general categories of closed cases - limited services and extended services. Extended services frequently require negotiations and/or representation at judicial proceedings.

Cases handled. A term used by local programs when referring to the total number of open and closed cases on the books at any one time.

Phantom case. It is a case that never existed and for which the local program could not produce any record of a client.

Single case reported more than once. Typically found in combinations of open/open, open/closed, or closed/closed in the subsidiary records supporting the annual case service report and identifiable by same client name, same date, and same legal issue for a client. Some local programs close and recount open/open and open/closed duplicates in different years making detection more difficult. Prevalent in programs having unusually large numbers of open cases.

Non-reportable issue. When client eligibility is undetermined or undocumented according to the LSC Act and Corporation regulations or when the local program violates a congressional restriction on allowable case services (e.g., abortion or redistricting cases). A telephone call in which eligibility is not determined and the application is not legally assessed by a qualified legal representative of the program also does not qualify as a reportable case.

C. IMPORTANT SOURCES OF INFORMATION

Transcripts of House Appropriations Subcommittee hearings on LSC budget requests dated February 25, 1998 and March 3, 1999; LSC Inspector General semiannual reports to Congress for the periods ending March 31, 1998, September 30, 1998, and March 31, 1999; LSC Fact Books for the 1996 and 1997 programs and supporting documents; LSC and LSC OIG communications, reports, and briefings from September 1997 to April 2000; Associated Press Report dated April 8, 1999; General Accounting Office Report dated June 25, 1999; Heritage Foundation Report dated July 22, 1999; House Judiciary Subcommittee report on LSC hearing of September 29, 1999; Congressional Record, Congressional "Dear Colleague" letters, the LSC website www.lsc.gov, and the LSC Act, IG Act, and government auditing standards (excerpts in Appendices 1, 2, and 3).

D. BACKGROUND

The public accounting for legal services rendered is one of the most important functions performed by the Corporation. It is important because it enables the President, the Congress, and the public (benefactors and beneficiaries alike) to see what is being accomplished, in terms of cases produced, with the several hundred million dollars the U.S. Government spends on this program each year. In addition to being used to monitor program performance and effectiveness, the program's annual case workload is also important because it is used by the Corporation to support and justify annual funding requests and by the Congress to make judgements on annual funding levels.

The Corporation reported to Congress that the 1997 program had 471,600 cases open at the end of the year and 1,461,013 cases closed during the year. It summed open and closed cases when claiming the program served 1,932,613 clients during the year (Appendix 4). The Corporation obtained this information from annual case reports submitted by 269 grantees. The program received funding totaling $511.8 million for the 1997 program from the Federal appropriation and non-Corporation-funding sources. Based on the reported closed case count, the average cost per case for the entire 1997 program was $350 ranging from $80 at one program to $4,790 at another (Appendices 5 and 6). The Corporation submitted information from this fact book to Congress in support of the FY 1999 and FY 2000 appropriations. The Congress relied on 1996 and 1997 annual caseload program data when making the decision to increase the Corporation's FY 1999 Federal appropriation by $17 million.

E. APPLICABLE CASE REPORTING CRITERION

The LSC Act (Appendix 1) requires the Corporation to provide the President and Congress with an annual report on legal services provided. The Act also requires prospective clients to be financially eligible to receive legal assistance (e.g., must be within established poverty guidelines). Local programs must determine eligibility before applicants can be properly accepted into the program and their legal issues counted as cases in annual reports to the Corporation.

The IG Act (Appendix 2) requires inspectors general to keep the Congress "fully and currently informed" of "significant problems, abuses, and deficiencies" resulting from OIG activities, through "semiannual reports and otherwise". The IG Act also requires immediate reports for serious or flagrant problems. In addition to audits, "OIG activities" typically include such functions as investigations, inspections, program assessments, and other special reviews and studies. Any "significant problem, abuse, and deficiency" disclosed during while performing audit or non-audit OIG activities are within the purview of the reporting requirements of the IG Act. When performing audits, the IG Act requires OIG's to use the Comptroller General's government auditing standards. The IG Act does not require OIG's to use these standards when performing other non-audit activities.

Government auditing standards (Appendix 3) provide specific protocols for the performance of audits and issuance of draft and final audit reports. When audit work identifies important matters requiring the prompt attention of management and legislators, the standards allow the OIG to temporarily bypass the often time-consuming protocols typically associated with processing and issuing final reports on the results of audit. They can do so through the issuance of issue interim oral or written reports. Interim briefings and reports on important issues and commonplace in the IG community, particularly when facts are indisputable (as was the case with many of the facts emanating from audits and examinations of local legal services programs by the Corporation OIG). The IG community typically refers to them as "quick reaction" reports.

The Corporation's case reporting standards (handbook and grant activity instructions) and grant agreements require local programs to submit annual case reports, in specified format and content, to the Corporation. The Corporation uses this information to prepare the annual caseload report and to justify and support funding requests to the Congress. The standards are based on relevant sections of the LSC Act, Corporation regulations, and Corporation policies and procedures. In general, they require local programs to determine if applicants are eligible to receive legal assistance (e.g., must be poor and in most instances an U.S. citizen) before "opening" cases for prospective applicants and their legal issues legitimately reported to the Corporation as opened or closed cases. The Corporation did not authorize local programs, for the 1997 program; to report cases "exclusively" financed with non-Corporation funds. It did require local programs to report cases "primarily" financed with non-Corporation funds.

The Corporation revised and reissued the handbook on November 24, 1998. The supplanted version of the handbook was dated July 1993. The stated purpose of the revised handbook is to "gather quantifiable information on cases for use in annual funding requests." Each year, the Corporation issues a new set of grant activity reporting instructions to local programs which complement the reporting requirements of the handbook. For 1999, the Corporation reversed a longstanding policy and required local programs to report cases exclusively financed with non-Corporation funds (over the objections of the House Majority Leader). Local programs must also establish legitimate attorney/client relationships and provide legal services to the clients before establishing and reporting cases to the Corporation.

Corporation headquarters did not have written standards and necessary quality control procedures to ensure the annual report to Congress was accurate.

F. SUMMARY RESULTS OF EXAMINATIONS OF CASE REPORTS FOR THE 1997 LEGAL SERVICES PROGRAM

The Corporation claimed in an annual nation-wide report to Congress that the program served 1.9 million clients in 1997. A series of OIG reviews performed at Corporation headquarters at the direction of the Inspector General and another series of audits and examinations performed by OIG, GAO, and Corporation headquarters staff of case reports submitted by 16 local programs revealed the reported number significantly overstated (Appendix 8).

The Inspector General and a senior program analyst and supervising senior auditor in the OIG organization independently reviewed and analyzed the quality of annual caseload information available at Corporation headquarters for the 1997 legal services program. These analyses were performed in November 1997, June 1998, and July 1998 and concluded the (1) information was unreliable and should not be used as a bulwark to obtain Federal funding, (2) numbers are likely wrong and astounding, and (3) the numbers reported to Congress are poor, at best. The July analysis also identified several hundred thousand questionable cases in the system.

Another series of audits and evaluations performed by OIG and GAO buttressed the other assessments made by OIG that there was something seriously wrong with the quality of 1997 program data in the Corporation's annual report to Congress. OIG and GAO staff determined that 172,570 of 397,295 (43.4 percent) cases reported by 13 legal services programs for the 1997 legal services program to the Corporation and included in the report to Congress were invalid and/or questionable. The Congress asked the GAO to review the accuracy of LSC's case statistics for the 1997 program in May 1999 after LSC officials continually denied existence of a serious and widespread reporting problem during the first several months in 1999.

Even more evidence of a serious and systemic reporting problem became available during the course of three reviews performed in 1998 by the Corporations headquarters staff. They reviewed the Central Michigan, Alameda, Farmworkers of North Carolina legal services programs and found serious problems; similar to OIG and GAO, at each program reviewed. These three programs had reported 25,950 cases to the Corporation for the 1997 program. The problems were so serious that the Corporation ceased funding the Alameda program and levied a fine against the North Carolina program. Unlike OIG and GAO, the Corporation reviews did not quantify the scope and magnitude of the problems.

Another analysis of the numbers in the 1997 annual caseload report revealed the Corporation's annual case-count was also boosted by a policy allowing local programs to report cases "primarily" financed with non-Corporation funding causing the annual closed caseload to be further overstated by about 144,000 cases (Appendix 6). Also, a procedure to sum open and closed cases in the annual caseload report to arrive at a annual "client served" figure resulted in 420,000 single cases to be counted in the 1996 fact book and recounted in the fact book for the 1997 program (Appendix 4).

It is reasonable to conclude from the results of all of these analyses, examinations, and audits that the Corporation's 1997 annual caseload report was unreliable and significantly overstated.

G. DISCUSSION OF THE SCANDAL

A complete chronology of the scandal appears under the title "Timeline and Facts" in Appendix 7.
The scandal began in November 1997 with the issuance of an OIG report to the Corporation chronicling a host of problems and concluding with a comment suggesting case statistics should not be used as a bulwark for continuance of Federally funding civil legal services. The OIG issued this report to the Corporation for comment but did not release report conclusions to the Congress or public. In a written response to this report, the Corporation President expressed satisfaction that the Inspector General would not make this report public.

Corporation officials disregarded this OIG report when they decided to continue using the annual caseload as a basis for justifying a request for increased program funding for FY 1999. In the budget hearing on February 25, 1998, the leadership informed congressional appropriators that a $57 million increase would enable local programs to increase the annual closed case-count from 1.4 million cases to 1.6 million cases. It also stated a funding increase of $17 million (85 percent for local programs) might enable local programs to increase the case-count to about 1.5 million cases. The 1.4 million closed case-count figure is traceable to the annual caseload report (fact book) for the 1996 program (Appendix 4).

The following year, the Corporation leadership made more use of information in the fact book for the 1997 program in the FY 2000 budget request as they sought another substantial increase in funding for the program. The FY 2000 budget hearing was March 3, 1999. In the FY 2000 budget request, Corporation leaders stated a $40 million budget increase would enable local programs to address over 1.6 million legal issues. They also claimed the 1997 program addressed 1.5 million legal issues. This closed case-count figure with some slight upward rounding, as well as graphs illustrating the type of legal issues addressed and reasons for closing cases appeared in the FY 2000 budget request. They are traceable to the fact book for the 1997 program (Appendix 4).

The Corporation's annual caseload numbers, budget requests, and testimony illustrate the high degree of importance it placed on the 1997 program case statistics in formulating the overall budget strategy for FY 1999 and FY 2000. The reviews performed by OIG, LSC, and GAO staffs revealed the case information for the 1997 program was significantly overstated (Appendix 8).

As Congress worked with the inflated case numbers during the budget process, the Corporation leadership and Inspector General acquired even more evidence of how bad the numbers were (Appendix 7). Every OIG analyses, audit, and examination from November 1997 to September 1999 revealed case over-counting and reporting problems. The Corporation found the same things in its concurrent reviews of local program case reports. The OIG and Corporation routinely and formally exchanged information about all of the reviews in briefings and/or interim reports.

In September 1998, the Inspector General wrote and sent a message to some members of his staff acknowledging that the Corporation provided inaccurate case statistics to Congress. In the same message, the Inspector General stated he was going to give the Corporation until February 2000 to fix the problem. The Inspector General's decision to keep the Congress in the dark enabled the Corporation to escape congressional scrutiny prior to Congress approving the FY 1999 appropriation increase of $17 million in October 1998. His decision would also have enabled the Corporation to continue using phony and inflated case numbers in the FY 2000 appropriation request had it not been for someone from inside of the Corporation stepping forward and reporting the problem to a member of the House Appropriation Subcommittee.

The member of the House Appropriations Subcommittee intervened during the March 3, 1999 budget hearing. In a series of penetrating questions and statements he methodically removed the cover of a scandal. The member astutely and correctly pointed out that about two-thirds of the approximate 149,000 open and closed cases included in the annual case reports of the Northern Virginia, Houston, San Diego, Miami, San Francisco, and Florida Rural programs were invalid. He simply wanted to know why the Corporation had not said anything about any of these problems in the hearing or in reports required by the IG Act.

Despite overwhelming evidence to the contrary, Corporation officials denied serious case-over-counting and reporting problems existed in response to the House appropriator's questions and later, in a steady stream of

questions from other members of Congress, congressional staff, and the media. The Corporation issued a press release in April 1999 claiming, among other things, the national impact of the case reporting problem was minor. A subsequent investigation by the Associated Press and the results of several audits, belatedly completed and issued by the Inspector General, confirmed the House appropriator was correct in his statement the six programs discussed in the hearing had serious case reporting problems (Appendix 8). In addition, evidence collected by Congress proves the Corporation and Inspector General knew about all of the problems at the six programs before the March 3, 1999, congressional budget hearing.

The central defense of the Corporation leadership and the Inspector General since March 3, 1999 is that all of the information emanated from OIG audits and that strict protocols in government auditing standards did not allow them to release information from unfinished audits. Their claim is contradicted by three important facts.

First, not all of the significant information involving the case reporting problems emanated from the limited number of audits done by OIG, but rather through other important and routine "OIG activities" such as analyses, examinations, and program assessments (Appendix 7). Under the IG Act, the Inspector General is obliged to report important matters to Congress when they represent significant problems, abuses, or deficiencies. In addition to the information developed by OIG, other information also became available to the Inspector General through reviews of local program case reports by Corporation attorneys. They too, confirmed the existence of systemic and significant case reporting problems. This information would have been extremely valuable to congressional appropriators and legislators as they deliberated the FY 1999 appropriation. It is a bogus argument to suggest that the IG Act and government auditing standards prevented Corporation leadership and the Inspector General from doing so.

Second, the government auditing standards permit and encourage interim reporting, oral and written, to legislative officials on important matters requiring prompt attention (Appendix 3). The standards state a carefully prepared report may be of little value to management and legislators if it arrives too late (e.g., after Congress made the final decision on annual program funding). The Corporation leadership and the Inspector General knew this but neglected to disclose this important aspect of the standards in testimony to Congress on March 3, 1999, and September 29, 1999. To state the standards prevented the Inspector General from alerting congressional overseers about phony cases in the Corporation's annual caseload report and budget request is not true.

Third, Corporation leadership and the Inspector General claimed government auditing standards prevented them from reporting information arising from unfinished audits in the September 30, 1998 semiannual report and the March 3, 1999 budget hearing testimony. On December 7, 1998, the Inspector General asked the Corporation Board Chairman, in writing, to discuss serious case reporting problems disclosed through some unfinished OIG audits with members of a private association (Appendix 7). The content and timing of the December 7 statement is inconsistent with statements made before Congress in the March 3, 1999 and September 29, 1999 hearings. If the standards prevented the Inspector General from reporting this information to Congress, the standards should have also prevented him from asking the Board Chairman to release the same information to a private association.

Corporation denials of significant case over-count problems ceased not long after the General Accounting Office (GAO) was asked, on May 3, 1999 to review a selected number of case reports for the 1997 program. The House Majority Leader, Chairman of the House Government Reform and Oversight Committee, and three House Appropriations Subcommittee members, asked GAO to independently evaluate whether grantees had misreported the number of cases for the 1997 program. On June 25, 1999, the GAO completed reviews of five of the largest local programs in the system and reported substantial case reporting problems to the Congressmen.

The congressional request for GAO to perform an independent inquiry of the case reporting problems prompted the Corporation leadership and the Inspector General to change their strategy. A little over one week after the congressional request to GAO, the Corporation asked local programs to self-inspect and certify reported 1998 case totals. After the Chairman of the House Judiciary Subcommittee announced in August that an oversight hearing would be held, the Corporation released the revised case figures for 1998 disclosing a significant case over-count. The Inspector General also began issuing audit reports at much faster pace than before which also disclosed a substantial case over-count (Appendix 7).

Evidence suggests OIG may have engaged in surreptitious activity to prevent the problems from becoming public prior to the March 3, 1999 budget hearing. The OIG did this by slowing the pace of completing audits and spreading the results of them over several semiannual reporting periods. With only piecemeal information, congressional overseers would be unable to discern a serious problem that may have had an adverse impact on the FY 1999 and FY 2000 budget requests. OIG started seven audits in 1998 and only one report was issued before the March 3, 1999 budget hearing. These are not complicated audits as illustrated by the speed in which GAO was able to complete its inquiry. OIG audits started before this budget hearing took about eight months to complete, the four audits started after the March 3 hearing took, on average, just four months to complete. Further, OIG issued the four final audit reports in September 1999 just as the Judiciary Subcommittee was about to hold this hearing. The Chairman's announcement of a hearing undoubtedly motivated the Inspector General to rapidly speed up completion of final audit reports. All eight of the OIG audit reports issued in 1999 disclosed case over-counting and contradict earlier testimony provided by Corporation officials and/or the Inspector General before the House Appropriations Subcommittee and House Committee on Government Reform and Oversight staff.

After months of denying a problem, the Corporation reported in September 1999, the 1998 program only produced 1.1 million closed cases. In April 2000 the Corporation reported 924,000 cases as the annual volume of work for the 1999 program. The greatly reduced numbers for the 1998 and 1999 programs, along with the case overstatements identified by OIG and GAO staffs for the 1997 program, offer compelling proof of how many phony cases were in the system when Corporation officials claimed to Congress that the case over-counting problem was minor. After the scandal became public, Corporation officials have claimed and/or implied local programs and the Corporation do not have an incentive to over-count cases primarily because program funding is distributed according to the poverty population. This is not a fully accurate statement. Local programs know the Corporation uses the annual reported caseload as an evaluation factor when making the competitive grant award decision. It is part of the grant application process. The Congress uses the program's annual caseload to make level of funding decisions. In the budget request for FY 1999, the Corporation used a projected increase in the annual caseload that would result from increased funding as a basis for requesting additional funding from the Congress.

The bottom line is Corporation officials inappropriately supplied the Congress with unreliable and bloated annual caseload information to support request for increased funding in FY 1999 and FY 2000. They did not officially acknowledge or mention any case reporting problems to Congress prior March 3, 1999. Afterwards, the Corporation leadership did not fully disclose or accurately describe the scope and magnitude of the problems in subsequent reports, testimony, and statements to the Congress. The Congress made judgments based on Corporation misrepresentations.

The Inspector General is expected to be the watchdog of the program. The IG Act required the Inspector General to promptly notify the Board and Congress about the case over-counting and reporting problems because of its potential impact on the Corporation appropriation. Beginning November 1997 and thereafter, the Inspector General met his obligation to keep the Corporation fully and currently informed of all case reporting problems as quickly as the information became available. However, from November 1997 through March 1999 and thereafter he kept the Congress in the dark about the scope and magnitude of the case over-counting problems. When asked direct questions from members of Congress and congressional staff in March 1999 he did not provide accurate or complete answers. Further, he did not mention anything about case reporting problems in the March 31, 1998 and September 30, 1998 semiannual reports or fully disclose widespread problems in the March 31, 1999 semiannual report to Congress. In September 1999 House Judiciary Subcommittee hearing, the Inspector General again withheld important information from Congress. He did not inform the Subcommittee that the primary cause of the case overstatements was non-compliance with the LSC Act and Corporation regulations on client eligibility and that government auditing standards actually allowed him to report information from unfinished audits to Congress (Appendices 7 and 3).

The LSC President achieved one of his major employment objectives when Congress approved the $17 million funding increase for FY 1999 and the Board praised his efforts in getting the funding increase and awarded him a new contract. After the Inspector General did not report, and later denied, existence of any significant and widespread case reporting problems in semiannual reports to Congress, the March 3 budget hearing, and March 1999 discussion with congressional staff, he benefited by having misconduct charges against him dropped. In March 1998, the Board had circulated to congressional staff a document detailing charges that the Inspector General attempted to

mislead congressional staff, misused his office, and violated the Corporation's communication policy with Congress. The Board also filed these charges with other authorities. After the Inspector General did not disclose serious case reporting problems to the Congress before passage of the FY 1999 appropriation, the Board publicly resolved the issues with him. After the Inspector General continued to not report significant and widespread case reporting problems to Congress after the FY 2000 budget hearing, the Board passed a resolution to increase his salary.

H. CONCLUSIONS AND RECOMMENDATIONS

The Congress should maintain stringent oversight of all of the Corporation's case reporting activities, through budget and oversight hearings, until it is confident that all of the information supplied by Corporation leadership and the Inspector General in future reports and statements is complete, accurate, and reliable.

The Congress should also correct a weak link in the accountability chain. The LSC Act presently requires an annual report to the U.S. President and the U.S. Congress on legal services provided. However, the applicable provision lacks clarity and specificity (Appendix 1). The Act should be amended to require a complete and accurate accounting of all cases remaining open at the end of the year and closed during the year. The annual reporting requirement should also require Corporation leadership to certify that the contents of the report is complete, accurate, and reliable. Such a requirement would make it more likely the President, the Congress, and the general public would get a more accurate view of what the program is accomplishing, in terms of legal services rendered, with the several hundred million dollars invested in the program each year. Without a specific statutory requirement for case information, it is very unlikely the Corporation will produce a timely and accurate report.

The Congress should take a fresh look at the current Corporation organizational structure to determine if any major changes are warranted at this time. It appears the Corporation is unable to perform the basic, and critically important, function of counting cases. It has been refining and upgrading the case reporting system for about 20 years and despite a major system upgrade in 1995, it still cannot get accurate performance data to the President, Congress, and public. If it cannot perform this basic task, then how can these program administrators be trusted to oversee the delivery of quality legal services to the poor? Something is clearly wrong and needs to be fixed. A congressionally mandated study of the LSC organization, by a group of renowned people outside of LSC organizational influences, with a tasking to provide recommendations on organization restructuring to Congress is one plausible way to approach this problem.

The Congress should complete the record by making a judgment on whether this Inspector General met his statutory responsibility for keeping the Congress "fully and currently" informed of all "significant problems, abuses, and deficiencies" as required by the IG Act. There is a preponderance of evidence suggesting the Inspector General did not fulfill his dual reporting responsibility to the Congress on this matter. Materially significant information pertaining to the FY 1999 and FY 2000 Corporation budget requests was in the possession of the Inspector General and was not provided to Congress. In semiannual reports to Congress and when questioned about the case reporting problem by a member of Congress and congressional staff, the Inspector General proceeded to deny a significant and widespread problem existed or fully disclose important matters. Afterwards, the Board proceeded to resolve serious charges against him along with passing a resolution to increase his salary. Based on this episode, it is reasonable to conclude that the incumbent Inspector General is not an independent, credible, or effective watchdog of the Corporation. If the incumbent were, the Congress would have found out about the case over-counting and reporting problem in February 1998 and certainly during the summer of 1998. If the Congress cannot rely on the Corporation Inspector General to alert it about significant matters effecting the budget and the credibility of the Corporation, one can reasonably expect that equally important and serious matters may not be promptly and properly reported in the future as well.

APPENDIX 1

(Excerpt)

Legal Services Corporation Act, As Amended 1977

Public Law 93-355
93 Congress, H.R. 7824
July 24, 1974
AS AMENDED
Public Law 95-222
95 Congress, H.R. 6666
December 28, 1977
42 U.S.C. § 2966, et. seq.

DEFINITIONS

Sec. 1002. As used in this title the term--

(1) "Board" means the Board of Directors of the Legal Services Corporation;

(2) "Corporation" means the Legal Services Corporation established under this title;

(3) "eligible client" means any person financially unable to afford legal assistance;

(4) "Governor" means the chief executive officer of a State;

(5) "legal assistance" means the provision of any legal services consistent with the purposes and provisions of this title;

(6) "recipient" means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 1006(a)(1);

ESTABLISHMENT OF CORPORATION

Sec. 1003(a). There is established in the District of Columbia a private nonmembership nonprofit corporation, which shall be known as the Legal Services Corporation, for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.

GRANT AND CONTRACTS

Sec. 1007(a). With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this title, the Corporation shall--

(1) insure the maintenance of the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients;

(2) (A) establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several States, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for individuals eligible for legal assistance under this title;

(B) establish guidelines to insure that eligibility of clients will be determined by recipients on the basis of factors which include--

(i) the liquid assets and income level of the client,
(ii) the fixed debts, medical expenses, and other factors which affect the client's ability to pay,
(iii) the cost of living in the locality, and
(iv) such other factors as relate to financial inability to afford legal assistance, which may include evidence of a prior determination that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and

(C) insure that (i) recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance (including such outreach, training, and support services as may be necessary), including particularly the needs for service on the part of significant segments of the population with eligible clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped individuals); and (ii) appropriate training and support services are provided in order to provide such assistance to such significant segments of the population of eligible clients;

RECORDS AND REPORTS

Sec.1008(a). The Corporation is authorized to require such reports as it deems necessary from any grantee, contractor or person or entity receiving financial assistance under this title regarding activities carried out pursuant to this title.

(b) The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.

(c) The Corporation shall publish an annual report which shall be filed by the Corporation with the President and the Congress. Such report shall include a description of services provided pursuant to section 1007(a)(2)(C)(i) and (ii).

Author's Comments:

Section 1008(c) requires an annual report to the President and Congress. It would greatly improve Corporation accountability to the President, Congress, and public if this important section of the LSC Act was amended to require the Corporation to submit an annual performance report that identifies the total number of cases open at the end of the year and closed during the year for the entire program. This would allow the President, Congress, and public to see what the program is producing, in terms of cases produced, for the several hundred million dollars invested in the program each year. Requiring Corporation officials to certify the annual report as accurate could further strengthen the Act.

The current wording of the Act as it pertains to the annual reporting requirement is very ambiguous (see section 1007(a)(2)(C)(I) and (ii) above) and does not afford the President, Congress, and public the level of visibility needed to properly oversee program performance.

APPENDIX 2
(Excerpt)
5 U.S.C. Appendix
Inspector General Act of 1978, As Amended

Sec. 1. Short title

That this Act be cited as the "Inspector General Act of 1978".

Sec. 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved

In order to create independent and objective units --

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

Sec. 4. Duties and responsibilities; report of criminal violations to Attorney General

(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established -

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

Sec 5. Semiannual reports; transmittal to Congress; availability to public; immediate report on serious or flagrant problems.

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to -

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing -

(1) any comments such head determines appropriate;

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

APPENDIX 3
(Excerpt)

Government Auditing Standards:

Revised July 1999 through Amendment No. 2

7.6 The second reporting standard for performance audits is:

Auditors should appropriately issue the reports to make the information available for timely use by management, legislative officials, and other interested parties.

7.7 To be of maximum use, the report must be timely. A carefully prepared report may be of little value to decisionmakers if it arrives too late. Therefore, auditors should plan for the appropriate issuance of the audit report and conduct the audit with this goal in mind.

7.8 The auditors should consider interim reporting, during the audit, of significant matters to appropriate officials. Such communication, which may be oral or written, is not a substitute for a final report, but it does alert officials to matters needing immediate attention and permits them to correct them before the final report is completed.

Author's Comments:

1. GAO standards 7.6, 7.7, and 7.8 were applicable in 1997 and 1998 as the Inspector General's staff performed audits and identified significant case reporting problems.

2. LSC Board Vice Chairman Erlenborn and LSC Inspector General Quatrevaux incorrectly told members of Congress government auditing standards do not allow the release of information from unfinished audits. GAO standard 7.8 clearly allows interim reporting, oral or written, before completing a final report. There was, and is nothing, in the IG Act or government auditing standards that would have prevented the LSC Inspector General from simply picking up the phone and alerting House and Senate appropriators that the Corporation's annual caseload report was unreliable.

APPENDIX 4
(Excerpt)
Legal Services Corporation
Fact Books for 1996 and 1997 Programs
($ in millions/cases in millions)

	1996	1997
Federal Appropriation	$278.0	$283.0
Amount of Non-LSC Funding	$209.0	$228.8
Total Funding	$487.0	$511.8
Number of Programs Receiving Grants	281	269
Number of Cases Closed During Year	1.426	1.461
Number of Cases Open on December	0.420	0.472
Total Number of Clients Served	1.846	1.933

Author's Comments:

1. The average cost per case for the 1996 program is $341 ($487 million/1.426 million closed cases).

2. The average cost per case for the 1997 program is $350 ($511.8 million/1.461 million closed cases.

3. The Corporation summed .420 million open cases with 1.426 million closed cases in 1996 to arrive at a "clients served" total. Single open cases in 1996 were recounted as part of the 1997 program when the Corporation used the same procedure to arrive at a "clients served" total. The recounting occurred because cases open at the end of 1996 were either closed in 1997 or still remaining open at the end of 1997.

4. OIG staff documented that open and closed case totals in these annual reports to Congress contained a disproportionately large number of cases dating back to previous years, some into the 1980's. This suggests some programs may prop up annual case totals by reporting old cases in current reporting periods. When local programs fail to properly manage and report cases in the year the service was provided, they wind up recounting them year after year.

APPENDIX 5

Analysis: Average Cost Per Case and Total Cases Closed 1980 - 1997 Legal Services Programs

Grant Year	Annual LSC Appropriation ($ in millions)	Non-LSC Funding ($ in millions)	LSC and Non-LSC Funding ($ in millions)	Total Cases Closed (in millions)	Average Cost Per Case (Total Funding)
1980	300.0	37.7	337.7	1.144	$295
1981	321.3	48.1	369.4	1.245	$267
1982	241.0	50.0	291.0	1.147	$254
1983	241.0	52.0	293.0	1.274	$230
1984	275.0	63.7	338.7	1.227	$276
1985	305.0	81.5	386.5	1.311	$295
1986	292.4	91.0	383.4	N/A	N/A
1987	305.5	121.0	426.5	1.422	$300
1988	305.5	129.2	434.7	1.430	$304
1989	308.5	149.1	457.6	1.453	$315
1990	316.5	183.9	500.4	1.487	$337
1991	328.2	200.4	528.6	1.526	$346
1992	350.0	238.6	588.6	1.563	$377
1993	357.0	245.8	602.8	1.617	$373
1994	400.0	242.8	642.8	1.686	$381
1995	400.0	253.5	653.5	1.658	$394
1996	278.0	209.0	487.0	1.426	$342
1997	283.0	228.8	551.8	1.461	$350
Average	$311.6	$145.9	$457.4	1.416	$321

Author's Comments:

1. The primary source for this analysis is the fact book for the 1997 program.

2. The analyst determined average cost per case figures by dividing total funding by total cases closed. The chart shows that average costs were greatest in years the program received the most total funding (1992-1995).

3. LSC reported the 1998 program produced 1.1 million cases. It was the lowest reported number in program history until LSC reported to Congress that the 1999 program only produced 924,000 cases.

4. The Corporation did not report any closed cases for 1986 in this fact book.

APPENDIX 6

Analysis of Case Reports for Local Programs Financed Primarily with Non-LSC Funding

Chart 1 of 3

Grantee	LSC Funding ($ in millions)	Non-LSC Funding ($ in millions)	Total Funding ($ in millions)	Amount Non-LSC Funding Exceeds LSC Funding ($ in millions)	Cases Closed	Average Cost Per Case (Whole $)	Case Inflation
Alaska	0.956	1.185	2.141	0.229	4,089	524	437
San Mateo, CA	0.294	0.573	0.867	0.279	2,665	325	858
Northern California	2.093	3.774	5.867	1.681	26,373	222	7,556
San Francisco, CA	0.654	1.456	2.110	0.802	15,995	132	6,080
Marin, CA	0.137	0.510	0.647	0.373	1,782	363	1,027
Denver, CO	1.434	1.444	2.878	0.010	12,864	224	45
Bay Area Florida	1.042	2.775	3.817	1.733	8,893	429	4,038
Broward County, FL	0.935	2.411	3.346	1.476	4,617	725	2,037
Central Florida	0.916	1.644	2.560	0.728	3,380	757	961
Jacksonville, FL	0.733	1.766	2.499	1.033	4,670	535	1,930
North Florida	0.786	1.112	1.898	0.326	6,735	282	1,157
Northwest Florida	0.403	0.415	0.818	0.012	3,260	251	48
Withlacoochee, FL	0.416	0.478	0.894	0.062	2,335	383	162
Atlanta, GA	1.673	2.271	3.944	0.598	11,261	350	1,707
Hawaii	0.853	2.304	3.157	1.451	12,454	253	5,724
Native Hawaii	0.102	0.961	1.063	0.859	317	3,353	256
West Central Illinois	0.177	0.212	0.389	0.035	1,164	334	105
Poke County, IA	0.228	0.395	0.623	0.167	5,626	111	1,508
Kansas	2.157	6.212	8.369	4.055	27,603	303	13,374
Cumberland Trace, KY	0.372	0.436	0.808	0.064	2,152	375	170
Louisville, KY	1.095	1.363	2.458	0.268	2,426	1,013	265
Northern Kentucky	0.283	0.434	0.717	0.151	2,440	294	514
Baltimore, MD	3.046	7.074	10.120	4.028	27,490	368	10,942
Cape Cod, MA	0.186	0.672	0.858	0.486	3,787	227	2,145
South Middlesex, MA	0.152	0.839	0.991	0.687	973	1,018	675
Berrien, MI	0.173	0.207	0.380	0.034	933	407	83
Lakeshore, MI	0.525	0.555	1.080	0.030	7,440	145	207
Michigan Indian	0.115	0.217	0.332	0.102	165	2,012	51
Oakland-Livingston, MI	0.517	0.667	1.184	0.150	3,612	328	458
Southcentral Michigan	0.222	0.271	0.493	0.049	2,385	207	237
Anishinabe, MN	0.192	0.254	0.446	0.062	947	471	132
Judicare, MN	0.096	0.453	0.549	0.357	1,271	432	826
Northeastern Minnesota	0.441	1.663	2.104	1.222	7,459	282	4,332
Northwest Minnesota	0.432	1.412	1.844	0.980	1,823	1,012	969
South Minnesota	1.388	4.290	5.678	2.902	12,207	465	6,239

Eastern Missouri	1.676	2.988	4.664	1.312	17,647	264	4,964
Western Missouri	1.660	1.967	3.627	0.307	14,412	252	1,220
Camden, NJ	0.900	3.307	4.207	2.407	5,128	820	2,934
Cape-Atlantic, NJ	0.216	0.915	1.131	0.699	3,495	324	2,160
Essex-Newark, NJ	0.837	4.089	4.926	3.252	9,042	545	5,969

Chart 2 of 3

Grantee	LSC Funding ($ in millions)	Non-LSC Funding ($ in millions)	Total Funding ($ in millions)	Amount Non-LSC Funding Exceeds LSC Funding ($ in millions)	Cases Closed	Average Cost Per Case (Whole $)	Case Inflation
Hudson County, NJ	0.624	2.674	3.298	2.050	737	4,475	458
Hunterdon County, NJ	0.021	0.365	0.386	0.344	362	1,066	323
Mercer County, NJ	0.177	0.951	1.128	0.774	397	2,841	272
Middlesex County, NJ	0.255	1.261	1.516	1.006	1,019	1,488	676
Morris County, NJ	0.088	0.647	0.735	0559	181	4,061	138
Ocean-Monmouth, NJ	0.406	1.648	2.054	1.242	848	2,422	513
Passiac County, NJ	0.342	1.705	2.047	1.363	3,932	521	2,618
Summerset-Sussex, NJ	0.081	0.639	0.720	0.558	161	4,472	125
Union County, NJ	0.271	1.253	1.524	0.982	625	2,438	403
Warren County, NJ	0.038	0.403	0.441	0.365	1,161	380	961
Albuquerque, NM	0.525	0.590	1.115	0.065	2,036	548	119
Binghamton, NY	0.213	0.442	0.655	0.229	2,331	281	815
Central New York	0.668	1.137	1.805	0.469	2,696	670	701
Chemung County, NY	0.254	0.340	0.594	0.086	1,105	538	160
Jamestown, NY	0.146	0.202	0.348	0.056	1,235	282	199
Mid New York	0.811	1.176	1.987	0.365	4,189	474	769
Nassau-Suffolk, NY	0.842	3.301	4.143	2.459	5,598	740	3,323
Neighborhood, NY	0.897	1.607	2.504	0.710	8,335	300	2,363
Niagra Falls, NY	0.181	0.186	0.367	0.005	634	579	9
North Country, NY	0.309	0.455	0.764	0.146	2,412	317	461
Northeastern New York	0.575	0.968	1.543	0.393	4,809	321	1,225
Rockland County, NY	0.692	1.432	2.124	0.740	3,131	678	1,091
Southern Tier, NY	0.242	0.370	0.612	0.128	1,586	386	332
Westchester-Putnam, NY	0.475	1.830	2.305	1.355	3,527	654	2,073
Northwest North Carolina	0.383	0.420	0.803	0.037	856	938	39
Southern Piedmont, NC	0.635	0.802	1.437	0.167	2,401	599	279
Allen County, OH	0.274	0.395	0.669	0.121	751	891	136
Basic Legal Equality, OH	0.787	1.772	2.559	0.985	4,618	554	1,778
Butler-Warren, OH	0.286	0.301	0.587	0.015	2,093	280	53
Cincinnati, OH	1.014	2.097	3.111	1.083	3.901	797	1,358
Cleveland, OH	1.792	2.600	4.392	0.808	4,654	944	856
Columbus, OH	1.097	1.868	2.965	0.771	4,479	662	1,165
Dayton, OH	0.552	0.783	1.335	0.231	3,294	405	570
Lorain County, OH	0.237	0.411	0.648	0.174	1,436	451	386

Northeast Ohio	0.777	0.811	1.588	0.034	3,379	470	72
Ohio State	1.744	3.397	5.141	1.653	8,692	591	2,795
Stark County, OH	0.309	0.505	0.814	0.196	1,739	468	419
Toledo, OH	0.292	0.489	0.781	0.197	1,180	662	298
West Central Ohio	0.510	0.753	1.263	0.243	2,566	492	494
Western Reserve, OH	0.654	1.015	1.669	0.361	1,847	904	400

Chart 3 of 3

Grantee	LSC Funding ($ in millions)	Non-LSC Funding ($ in millions)	Total Funding ($ in millions)	Amount Non-LSC Funding Exceeds LSC Funding ($ in millions)	Cases Closed	Average Cost Per Case (Whole $)	Case Inflation
Wooster-Wayne, OH	0.089	0.148	0.237	0.059	231	1,026	58
Marion-Polk, OR	0.230	0.312	0.542	0.082	2,346	231	355
Multnomah, OR	1.874	2.421	4.295	0.547	14,768	291	1,881
Portland, OR	0.491	0.923	1.414	0.432	4,971	284	1,519
Central Pennsylvania	1.013	1.964	2.977	0.951	4,468	666	1,427
Chester County, PA	0.133	0.321	0.454	0.188	1,260	360	522
Delaware County, PA	0.288	0.544	0.832	0.256	1,331	625	410
Keystone, PA	0.340	0.529	0.869	0.189	1,069	813	232
Laurel, PA	0.598	0.671	1.269	0.073	2,164	586	124
Montgomery County, PA	0.184	0.759	0.943	0.575	714	1,321	435
Neighborhood, PA	1.565	1.781	3.346	0.216	5,567	601	359
Northeastern Pennsylvania	0.385	0.752	1.137	0.367	773	1,471	250
Northern Pennsylvania	0.341	0.449	0.790	0.108	852	927	116
Northwestern Pennsylvania	0.685	0.778	1.463	0.093	3966	369	252
Pennsylvania	0.204	0.538	0.742	0.334	775	957	349
Southwestern Pennsylvania	0.493	0.624	1.117	0.131	1,769	631	207
Susquehanna, PA	0.388	0.514	0.902	0.126	1,721	524	240
Rhode Island	0.728	0.942	1.670	0.214	2,448	682	314
Middle Tennessee	0.994	1.198	2.192	0.204	3,264	672	304
West Tennessee	0.612	1.125	1.737	0.513	1,282	1,355	379
Blue Ridge, VA	0.248	0.399	0.647	0.151	1,749	370	408
Central Virginia	0.502	0.750	1.252	0.248	4,166	301	825
New River Valley, VA	0.204	0.276	0.480	0.072	1,648	291	247
Northern Virginia	0.461	2.153	2.614	1.692	4,166	627	2,697
Peninsula, VA	0.561	0.577	1.138	0.016	5,179	220	73
Piedmont, VA	0.158	0.340	0.498	0.182	2,139	233	782
Rappahannock, VA	0.210	0.420	0.630	0.210	1,077	585	359
Roanoke Valley, VA	0.287	0.476	0.763	0.189	1,160	658	287
Southside Virginia	0.129	0.296	0.425	0.167	1,233	345	484
Southwest Virginia	0.364	0.489	0.853	0.125	2,220	384	325
Southwest Virginia	0.214	0.373	0.587	0.159	2,248	261	609
Tidewater Virginia	0.746	1.085	1.831	0.339	4,276	428	792
Virginia	0.721	0.935	1.656	0.214	3,596	461	465

Virgin Islands	0.265	0.427	0.692	0.162	594	1,165	139
TOTALS	$67.694	$136.261	$203.955	$68.567	475,440	N/A	143,948

Author's Comments:

1. The source of information is the Corporation's fact book for the 1997 program and reported closed case totals for each program assimilated into the fact book. LSC required local programs to report cases "primarily" financed with non-LSC funds. This policy caused a great inequity in the reporting system while also making it difficult to determine how many cases were being produced with LSC funding. For example, the Houston (Gulf Coast) program received nearly 90 percent of all its funding from LSC and reported its total annual caseload. Conversely, the Northern Virginia program received less than 20 percent of its funding from LSC and reported all of its cases too. This analysis estimated the amount of case inflation resulting from the LSC policy.

2. The analyst examined the 269 programs submitting case reports to the Corporation for the 1997 program. 114 of 269 programs received non-Corporation funding that was in excess of the Corporation grant. Total funding is to sum of the Corporation grant and funds provided by non-Corporation funding sources. Average cost per case for each program was determined by dividing total funding by total number of closed cases reported. Case inflation was determined by dividing the average cost per case for each program into the amount of non-Corporation funding exceeding the Corporation grant. The nation-wide application results in case inflation of 143,948 cases. This figure represents the sum of case inflation for 114 programs.

APPENDIX 7

Timeline and Facts

1. November 1997 OIG Issues Study on Case Statistics to Corporation for Comment. The study officially began September 1997 and chronicled a host of significant case reporting problems in a written report. The OIG provided the report to the Corporation's President and headquarters staff for comment. The principal conclusions of the study was the unreliability of the case statistics and that they should not be used as a bulwark, as they had been, to support continuance of federally funding civil legal services. In a written response to the Inspector General on November 25, 1997, the Corporation President stated that he was pleased the OIG effort would not include a (formal) report.

2. February 28, 1998 Corporation Testimony on FY 1999 Appropriation Request. The Corporation disregarded the results of the OIG Study, and with the knowledge of the Corporation President and the Inspector General, the Corporation used information from the fact book for the 1996 program to gain congressional support for the FY 1999 appropriation.

3. March 20, 1998, Corporation Vice Chairman Sends Document to House and Senate Staff Detailing Inspector General's Attempt to Mislead Congressional Staff, Misuse of Office, and Violating Corporation's Communication Policy with Congress.

4. March 31, 1998, Semiannual Report to the Congress. The Board endorsed the report. The Inspector General stated there were no significant problems, abuses, or deficiencies to report. On page 9, the Inspector General stated a preliminary review of case statistics was completed. He did not inform the Congress that an OIG report had been issued to the Corporation in November 1997 for comment and that comments had been provided. He also did not report a principal conclusion of the report stating Corporation case statistics were unreliable and should not be used as a bulwark to support federally funding legal services. At the time, the Corporation had used unreliable case statistics in the February 1998 budget hearing.

5. March/April 1998 Corporation Issues Draft Report on Central Michigan Program. The Corporation's draft report for this examination identified a litany of case reporting problems. The Corporation provided the draft report to the Inspector General for comment. The OIG audit staff used substantial portions of the report to develop audit steps for the case reporting audits.

6. May 1998 Corporation Issues Fact Book for the 1997 Program to Congress, Press, and Public. On May 13, 1998, the Corporation President issued a nation-wide message on the Fact Book stating, we are just completing the Fact Book (nation-wide report on program performance) and we think this publication provides overwhelming documentation of LSC's success in achieving its mission, and we hope that it will build further support for the program in the Congress and the public. The fact book was issued to congressional appropriators and legislators in May 1998. It was released with an accompanying Corporation President message stating it included complete statistics on 1997 activities and preliminary reports and estimates for 1998. He also stated that the 1997 statistics augur well for the future of legal services and, despite a slight reduction in overall program staff, the number of cases closed during the year showed a modest increase over 1996 levels. The Corporation provided this document to congressional appropriators and legislators as the Congress deliberated on the FY 1999 appropriation and also used it to support the FY 2000 budget request.

7. May 26, 1998 Corporation Issues Report on Alameda Program. The Corporation provided this report to the Inspector General on May 27, 1998. It reported, among other things, that the program failed to carry out basic processes regarding client eligibility, case management, and case reporting. It deemed the program's intake system and client eligibility documentation as wholly inadequate. It evidenced reporting prohibited cases, providing services to over-income clients, duplicative reporting, and misuse of categories such as client withdrew and referred after legal assessment. It concluded by stated the program extensively violated Corporation reporting directives and provided multiple inaccurate numbers in report to the Corporation. The Corporation President decided to stop funding the program on June 26, 1998.

8. June 13, 1998 OIG Receives Draft Audit Report on Northern Virginia Program. The report identified significant case reporting problems including a 3,432 overstatement of open cases in the report to the Corporation. The report showed many of the cases were no longer being serviced and dated back to the early 90's and into the 80's. Evidence suggested many cases still in the system as open had been reported as closed in previous years.

9. June 26, 1998 Inspector General Analyzes Case Data in Corporation's Case Reporting System and Provides Report to OIG Staff and Corporation. The Inspector General analyzed case report information provided by 269 legal services programs. The information was obtained from the database that produced the fact book for the 1997 program. The Inspector General distributed the information to the OIG staff and discussed the analysis with the Corporation's Vice President for Programs and members of the headquarters staff on July 28, 1998. The Inspector General stated that the numbers are likely wrong and astounding. He cited cost per case variations ranging from $97 per case for one program to $4,642 for another. The variances signify problems with the quality of case data and possible uneconomical or inefficient program operations.

10. July 20, 1998, Inspector General Receives and Comments on OIG Staff Analysis of Quality of Data in Corporation's Case Reporting System. The Inspector General received a written report from OIG staff, as requested, on the overall quality of grantee case reports submitted to the Corporation. This scope of the review was the 269 case service reports submitted by grantees for the 1997 program. It was performed at Corporation headquarters and supplemented by on-site visits to two local programs. The report concluded that the overall quality of data in the case reporting system was poor, at best. It identified an estimated several hundred thousand questionable cases in the system. It stated that the Corporation's policy of reporting cases primarily funded with non-Corporation funds makes the Corporation and grantees vulnerable to a possible charge that they may be padding the books to justify continuation of the program. It attributed the over-counting problems to Corporation efforts to bolster the case-count, local program mismanagement of cases, excessive open case inventories, excessive numbers of case referrals in the system and non-standard computer hardware and software as the underlying causes. 112 local programs exceeded open case norms and 55 programs exceeded case referral norms established by the Corporation. As examples of the problems, the author of this report used the Florida Rural program as an example of open case problems and the San Diego and San Francisco programs as examples of the referral problems with attendant client eligibility problems. After this review was completed and after the three programs had been contacted by OIG staff, the three programs collectively reduced reported case reports for the 1997 program from 102,979 open and closed cases to only 29,364 cases. The Inspector General thanked the author for the paper and expressed concern about how to deal with the "primarily" financed with non-Corporation funds issue. On an earlier date, he indicated in writing that this was a very serious problem. The Inspector General discussed contents of this report with the Corporation President and Vice President for Programs.

11. July 28, 1998, OIG Meets with Corporation Vice President and Headquarters Staff. The Inspector General arranged and attended the meeting. The issues contained in the June 26 and July 28 analysis were discussed along with the results of the Northern Virginia and Houston audits. The Northern Virginia audit disclosed serious case management problems. The Houston audit disclosed serious double-counting problems spanning quite a few years as well as problems with controlling open case inventories. The Inspector General subsequently reported the Northern Virginia program overstated open cases by 3,432 (69 percent of reported total). He also reported that the Houston program overstated closed cases by 1,945 cases (21.5 percent of reported total).

12. August 3, 1998 the Corporation Reduces Florida Rural Case Report for the 1997 Program by 39,471 cases. The OIG staff contacted the program on July 7, 1998, and received information from the program indicating the reported cases did not exist. After being informed by the OIG staff of this serious irregularity, the local program and the Corporation processed an internal adjustment but did not process an adjustment in the report provided to Congress. The Inspector General was aware of this serious case over-counting problem but did not authorize an audit of the program or tell Congress about it.

13. August 7, 1998, OIG Receives Draft Audit Report on the Houston Program. The audit was performed in June 1998 and identified serious problems with the management of open case inventories and reporting single case more than once. The program's database produced a report showing over 15,000 instances where the same client had more than one case in the system. The draft report was slightly delayed to allow OIG staff to complete the July 20 analysis of system deficiencies as requested by the Inspector General.

14. September 3, 1998, Assistant Inspector General Sends Letter to Corporation Vice President for Programs. As the result of an OIG audit of the San Diego program in August 1998, the Assistant Inspector General reported to the Corporation's Vice President for Programs the San Diego program had overstated the number of reported closed cases for the 1997 program by "at least 21,504" cases. This finding was developed and resolved during an on-site visit to the program several weeks earlier. The pervasive cause of this overstatement (over 14,000 instances) was the failure of the program to determine financial eligibility as required by the LSC Act and Corporation regulations. The local program claimed in a letter to OIG that it began counting these matters as cases several years earlier upon advice received from Corporation representatives. The local program admitted the overstatement and agreed to process an adjustment in August 1998. The OIG staff revisited the program in October to review other matters. The matter of the overstatement was resolved on the first day of the audit in August 1998 when the program agreed to process the adjustment. The adjustment eventually occurred on January 22, 1999 for 21,788 cases. The program followed up with reduced case figures for the 1998 program on March 1, 1999,that was 23,906 cases fewer than originally reported for the 1997 program. The Inspector General incorrectly stated in the September 29, 1999 hearing that this phase of the audit was not completed until October 1998.

15. September 12, 1998 Corporation Board Meets and Discusses Case Reporting Problems. The Corporation President discussed case reporting problems identified by OIG at the public session of the Board meeting. The minutes of this meeting chronicle exact comments. In subsequent public statements, the Corporation President admitted that the Inspector General kept him informed about the case reporting audits during the summer of 1998.

16. September 18, 1998 Corporation Issues Report on the Farmworker of North Carolina Legal Services Program. The Corporation reported, among other things, that the program failed to document client eligibility in a large percentage of cases as required by the LSC Act and Corporation regulations. It also reported that case reports provided to the Corporation inappropriately included ineligible and rejected matters, which overstated the case reports. The Corporation provided this report to OIG.

17. September 23, 1998 OIG Meets with Corporation Vice President and Headquarters Staff on the Results of the First Phase of the San Diego Audit. The Inspector General arranged and attended this meeting. The OIG staff presented the audit findings on the 21,504 case overstatement as discussed in the Assistant Inspector General's letter of September 3. During the meeting other important issues were discussed. They related to access issues involving the program's computer and associate volunteer lawyer program.

18. September 23, 1998 Inspector General Comments on Inaccurate Case Data Supplied to Congress. Responding to a message from OIG staff that the Corporation's fact book for the 1997 program was grossly exaggerated, the Inspector General stated in writing he agreed that the information the Corporation provided to Congress was inaccurate. He also stated that he was not going to make a public comment on the Corporation's case statistics until February 2000. He said he wanted to give the Corporation a chance to fix the problem. This decision effectively prevented the Congress from learning about the case reporting problems prior to approving the FY 1999 appropriation.

19. September 30, 1998, Inspector General Semiannual Report to the Congress. The Inspector General reported that the Corporation did not have any significant problems, abuses, or deficiencies". The only reference in the report to the subject of case reporting was a simple statement that five case reporting audits had begun during the period. The Board endorsed this report. At the time of this report, Corporation leadership and the Inspector General were aware of three OIG analyses, which evidenced systemic case reporting problems. The July 20 analysis and report disclosed very serious case reporting and over-count problems at the Northern Virginia, Houston, San Diego, Florida Rural, and San Francisco programs as well as a host of other programs identified in the backup documents for this analysis. Despite evidence of significant case reporting problems, the Inspector General would not authorize an audit of the Florida Rural program and actually removed the San Francisco program from the audit schedule after discussions with the Corporation President. At the time, The Inspector General and the Corporation leadership were also aware of serious case reporting problems at the Central Michigan, Alameda, and Farmworker of North Carolina programs. They were also aware that the Corporation had provided inaccurate case information to Congress in support of the FY appropriation request in February 1998. They also knew that Congress was still deliberating on the FY 1999 appropriation. Final approval occurred on the appropriation on October 21, 1998.

20. October 1998 OIG Issues Final Audit Report on Northern Virginia Program. The audit was performed in April/May 1998 and identified overstatements totaling 3,959 cases.

21. October 21, 1998 Congress Approved a $17 million Appropriation Increase for the Corporation.

22. November 5, 1998 OIG Briefs the Second Phase of the San Diego Audit to Corporation's Vice President and Headquarters Staff. The Inspector General arranged and attended this meeting. The OIG briefed the Corporation's Vice President on the second phase of the San Diego audit. The OIG staff reported that it confirmed the program reported about 2,400 cases that did not exist. It also reported the program granted access to computer and associate program offices.

23. November 1998 Corporation Board Resolves Charges of Misconduct Against the Inspector General for Attempting to Mislead Congressional Staff, Misusing Office for Personal Purposes, and Violating Corporation's Communication Policy with Congress.

24. On or about December 2, 1998, OIG Briefs Results of Miami Audit to Corporation's Vice President and Headquarters Staff. The Inspector General and Assistant Inspector General reported that the program overstated 16,418 closed cases and 462 open cases in reports submitted to the Corporation for the 1997 program. The primary cause of the closed case overstatement was the failure of the program to determine client eligibility before referring the applicants elsewhere. The primary cause of the open case problem was the failure to manage open case inventories.

25. December 7, 1998, the Inspector General asks Corporation Board Chairman to Discuss the Results of OIG Audits with Private Association. The Inspector General asked the Board Chairman, in writing, to discuss serious case reporting problems identified by OIG audits at the annual meeting of the National Legal Aid and Defenders Association. The problems he asked to be discussed dealt with audit findings relating to the San Diego and Miami programs. At the time, the draft audit reports had not been formally issued. The final audit reports were issued in March 1999 after the March 3, budget hearing. At the time of the Inspector General's request, the Corporation Leadership and the Inspector General were unwilling to share this information with the Congress.

26. December 16, 1998, OIG Management Receives Draft Audit Report on San Diego Program. The first phase of the San Diego audit was completed in August 1998 and identified a closed case overstatement in the case report for the 1997 program totaling at least 21,500 cases. The second phase of the audit was completed in October and identified an additional 500 closed case overstatement. The primary reason for of the overstatement of at least 14,000 cases was because the program did not determine eligibility as required by the LSC Act, Corporation regulations, and case reporting standards. The program also did not accept these telephone applicants into the program or legally assess the merits of the issues presented to the program.

27. December 30, 1998, the San Francisco Program Requests the Corporation to Reduce Reported Case Statistics for the 1997 program by 12,356 cases. The OIG staff contacted the program in the spring on several occasions to arrange an audit of the program. The executive director eventually went on sabbatical leave. The Inspector General removed this program from the audit schedule in July 1998 after discussions with the Corporation President. The reduced numbers appear to pertain to the failure of the program to determine client eligibility prior to referring applicants elsewhere. The Corporation and OIG staff reported this reduction to the Inspector General in January 1999.

28. December 31, 1998, OIG Management Receives Draft Audit Report on Miami Program. The Miami audit was performed in November 1998 and identified the overstatements in the case report for the 1997 program totaling 462 open cases and 16,418 closed cases. The primary reason for the closed case overstatement was because the program did not determine eligibility as required by the LSC Act, Corporation regulation, and case reporting standards. The program also did not accept these telephone applicants into the program or legally assess the merits of the issues presented to the program. If eligibility is not determined local programs should not accept applicants into the program or legally access the merits of issues.

29. January 22, 1999, the Corporation Reduces the San Diego Program Case Report by 21,788 cases. The case reduction was the result of an agreement reached on August 10, 1998, with the OIG staff. The reduction was

necessary primarily because the program did not determine client eligibility prior to referring applicants elsewhere and reporting the cases to the Corporation. The Corporation and OIG staff reported this reduction to the Inspector General in January 1999.

30. On or about March 1, 1999, the Miami Program Submits a Case Report for the 1998 Program that was 17,110 Cases less than the Previous Year. The substantial case reduction over the previous year was the direct result of OIG work. The reduction was necessary primarily because the program did not determine client eligibility.

31. March 3, 1999, Budget Hearing before the House Appropriations Subcommittee. The Corporation used the fact book for the 1997 program and the closed case portion of the handbook to justify, in part, a requested appropriation increase of $40 million for the program. In written testimony and opening remarks, the Corporation Leadership did not mention anything about any case reporting problems. When asked by a Subcommittee member, the leadership and Inspector General denied existence of a problem. When pressed, they stated IG Act and government auditing standards prevented them from informing the Congress about problems that did exist. They insisted the problems were not significant and widespread.

32. March 15-19, 1999, House Government Reform and Oversight Staff Contacted the Inspector General. The House staff asked the Inspector General about the case reporting problems discussed in the March 3 budget hearing. The Inspector General assured the staff that the case reporting problems occurred in one discreet category (referred after legal assessment), were not program wide, and were not found at other programs audited by the OIG. As evidenced by the facts, these statements of the Inspector General were untrue.

33. March 1999 OIG Issues Final Audit Report on San Diego Program. The audit was performed in August and October 1998 and identified several thousand cases that did not exist, significant eligibility problems, and net overstatements totaling 21,741 cases.

34. March 1999 OIG Issues Final Audit Report on Miami Program. The audit was performed in November 1998 and identified significant eligibility problems and overstatements totaling 16,193 cases.

35. March 31, 1999, Semiannual Report to the Congress. The Inspector General reported issuing three audit reports (Northern Virginia, San Diego, and Miami) during the period, two after the March 3 hearing, which reported overstatements totaling about 42,000 cases. The Board endorsed the report and stated the vast majority of overstatements pertained to "legitimate services". In fact, about 30,000 of the case overstatements in this report were primarily the result of program failure to properly determine client eligibility as required by the LSC Act and Corporation regulations before referring applicants elsewhere. In these instances, the local program recorded telephone contacts as cases even though no legal services were provided and they did not even "legally assess" the legal issues presented to them because the calls were handled by telephone operators. The Corporation Board misrepresented the 30,000 cases to Congress as "legitimate services" when, in fact, they represented "potential violations" of the LSC Act and Corporation regulations.

36. April 8, 1999 Associated Press Investigation Reveals that Five Legal Services Programs (Northern Virginia, San Diego, Miami, Florida Rural, and San Francisco) Overstated Annual Caseload by more than 90,000 Cases.

37. April 8, 1999 Corporation Issues Press Release Claiming, among other things, the National Impact of Case Reporting Issue is Minor, Programs have No Incentive to Over-report Cases, and the Inspector General Has Not Found Any Evidence of Fraud.

38. April 1999 Corporation Board Passes a Resolution to Increase Inspector General's Salary.

39. May 3, 1999, House Majority Leader, Chairman of House Government Reform and Oversight Committee, and Three Members of House Appropriations Subcommittee Ask GAO to Review Case Over-counting Problems. The GAO reviews five of the largest programs in the system (New York, Chicago, Baltimore, Los Angeles, and Puerto Rico) and finds, in a report issued June 25, 1999, the programs overstated annual caseloads by nearly 75,000 of about 221,000 cases reported to the Corporation and Congress for the 1997 program.

40. May 14, 1999, Board Member Sends Letter to House Majority Leader and Entire House of Representative Criticizing House Member Who Inquired About Case Reporting Problem in March 3, 1999 Budget Hearing.

41. May 14, 1999, Corporation Requests Local Programs to Self-Inspect and Certify Reported 1998 Case Data.

42. May 1999 OIG Issues Final Audit Report on Prairie State Program. The Audit was performed October 1998 and identified eligibility problems and case overstatements totaling 1,642 cases.

43. June 25, 1999 GAO Issues Report to Congress on Substantial Problems in Case Reporting by Five of LSC's Largest Grantees (Baltimore, Chicago, Los Angeles, New York City, and Puerto Rico Programs. The review was performed in May/June 1999 and identified that nearly 75,000 of about 221,000 cases reported by these programs for LSC's 1997 legal services program were questionable.

44. July 1999 OIG Issues Final Audit Report on Houston (Gulf Coast) Program. The audit was performed in June 1998 and identified eligibility problems and case overstatements totaling 2,023 cases.

45. August 1999 OIG Issues Final Audit Report on Wisconsin Program. The audit was performed in July 1998 and identified case overstatements totaling 698 cases.

46. September 1999 OIG Issues Final Audit Report on Eastern Missouri Program. The audit was performed June 1999 and identified eligibility problems and case overstatements totaling 5,872 cases.

47. September 1999 OIG Issues Final Audit Report on Philadelphia Program. The audit was performed April 1999 and identified eligibility problems and case overstatements totaling 3,332 cases.

48. September 1999 OIG Issues Final Audit Report on Monroe County Program. The audit was performed April 1999 and identified eligibility problems and case overstatements totaling 4,926 cases.

49. September 1999 OIG Issues Final Audit Report on Baltimore Program. The audit was performed May 1999 and identified case overstatements total 4,499 cases.

50. September 1999 the OIG Still Had Not Issued Final Audit Report on New Orleans Program. This audit began in June 1998 and reviewed 1997 program data. The OIG revisited the program in October 1998. OIG revisited this program again in October 1999, audited 1998 program data, and issued a report in 2000 identifying overstatements 1,319 cases. The OIG did not explain what happened to the earlier evaluation of the 1997 case statistics.

51. September 29, 1999 Hearing Before House Judiciary Subcommittee. The Inspector General did not disclose (1) all case reporting problems identified through all OIG activities such as the OIG analyses and examinations; (2) the provision of the government auditing standards allowing interim oral and written reports on unfinished audits; (3) the complete circumstances on the San Diego audit; and (4) the failure of many programs to determine eligibility as required by the LSC Act and Corporation regulations as the primary reason for the case over-counting. The Inspector General testified to the Subcommittee that the primary cause of the case overstatements identified during the course of the OIG reviews was because local programs failed to provide legal services on 30,053 reported cases. He failed to mention that these 30,053 reported cases were deemed invalid by his audit staff primarily because local programs failed to determine eligibility as required by the LSC Act and Corporation regulations and also failed to provide any legal service to the people who contacted the programs by phone. This non-compliance with law is a much more serious matter and undoubtedly would have triggered concern about the integrity of the entire program had the Inspector General been truthful in his testimony.

APPENDIX 8

Analysis of 13 Case Reports for 1997 Program

Legal Services Program	Open Cases	Closed Cases	Total Reported	Total Overstated
San Francisco	495	15,995	16,490	12,356
Florida Rural	44,993	8,400	53,393	39,471
Northern Virginia	4,949	4,166	9,115	3,959
Gulf Coast Houston	4,653	9,042	13,695	2,023
San Diego	792	32,304	33,096	21,741
Miami	3,313	20,487	23,800	16,193
Prairie State	4,686	13,091	17,777	1,642
Wisconsin	2,295	6,618	8,913	698
LAB Baltimore	25,772	27,490	53,262	34,565
Legal Service NYC	16,543	25,379	41,922	21,102
Puerto Rico	14,540	45,977	60,517	3,559
LAF Chicago	8,322	29,032	37,354	7,317
LAF Los Angeles	2,870	25,091	27,961	7,944
TOTALS	134,223	263,072	397,295	172,570

Author's Comments:

1. The Inspector General's staff informed him of the serious case over-counting problems at the San Francisco and Florida Rural programs in July 1998 but he would not authorize audits or share this information with Congress even though the sizable case reductions occurred after OIG staff contacted the programs. The Inspector General had approved an audit of the San Francisco program but removed it from the schedule after discussions with the Corporation President.

2. The OIG issued audit reports on the Northern Virginia, Gulf Coast Houston, San Diego, Miami, Prairie State, and Wisconsin programs. The GAO issued a report on the Baltimore, New York City, Puerto Rico, Chicago, and Los Angeles programs.

3. OIG staff and GAO staff examined annual case reports submitted 13 of the 269 grantees. These grantees collectively reported that their programs produced 397,295 cases in 1997. This number represents 20.5 percent of the total number of cases reported to Congress (1,932,613 cases) for the 1997 legal services program.

4. OIG staff and GAO staff determined that 172,570 of the 397,295 (43.4 percent) cases reported to LSC and included in the LSC report to Congress for the 1997 program were invalid and/or questionable.

5. GAO performed the reviews in May and June 1998 at the request of Congress. Congress requested the special GAO review after LSC leadership and the LSC Inspector General persisted in misrepresenting the scope, magnitude, and types of the case over-counting problems.

6. LSC staff reviewed three other case reports submitted by the Central Michigan, Alameda, and Farmworkers of North Carolina programs for the 1997 program. They also found serious case reporting problems. The problems identified at the Alameda and North Carolina programs were so serious that LSC decided to cease funding one program and fined the other.

Western Growers Law Group

A Professional Corporation

17620 Fitch Street
IRVINE, CA 92614-6032
Telephone: 949/863-0266
Fax: 949/863-9028

1140 B Abbott Street
SALINAS, CA 93901-4573
Telephone: 831/422-8379
Fax: 831/757-6324

3012 Silect Avenue, Ste. C
BAKERSFIELD, CA 93308-6336
Telephone: 661/322-9922
Fax: 661/322-3897

25060 Avenue Stanford, Ste. 200
VALENCIA, CA 91355-3446
Telephone: 661/257-4866
Fax: 661/257-0750

1005 12th Street, Ste. A
SACRAMENTO, CA 95814-3940
Telephone: 916/446-1435
Fax: 916/446-0181

Donald G. Dressler
Larry A. Dawson*
Of Counsel
**Also Admitted in Arizona*

Terrence R. O'Connor
Joanne Marecek

Melissa A. Landis

Donald J. Matson
William S. Marrs
Of Counsel

Michael L. Webb

All Attorneys Admitted in California
www.wga.com

April 22, 2002

The Honorable Bob Barr
Chairman, Subcommittee on Commercial and Administrative Law
House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

RE: California Rural Legal Assistance

Dear Mr. Barr:

There is a real problem in California of California Rural Legal Assistance, Inc, an LSC grantee participating in and profiting from fee generating cases. In general, CRLA, Inc., an LSC grantee, will file suit, often a class action suit and then contact a private attorney to represent some or all of the plaintiffs. Only this private attorney requests attorney's fees at the end of the case. Some of these fees apparently find their way back to CRLA, Inc. through the CRLA Foundation, a non-LSC grantee in the form of donations. The Foundation then supports additional litigation by CRLA, Inc.

These private attorneys are simply straw men who do little or no work on the case. The CRLA attorneys do virtually all of the work. Yet, either through settlement or through the court they demand and receive significant attorney fees. I, and many other ag labor attorneys, are convinced that a portion of these fees end up at the LSC grantee.

I. Waste of Resources

Mark Talamantes is a lawyer who, in 2000 represented CRLA Foundation in the case of Ramirez, et al. v. JB Farm Labor Contractor, et al., (E.D. Cal. Case No. CUIS-00-1162) U.S. District Court Eastern District of California. This was a class action case against a farm labor contractor and a grower who hired the contractor over conditions at a labor camp and other wage and hour issues.

On July 25, 2000, plaintiffs' attorneys took the deposition of a field foreman. CRLA, Inc. and CRLA Foundation had five attorneys, a community worker and a law clerk present for this deposition including two of the Directors of Litigation for CRLA, Inc. (CRLA has approximately 35 attorneys in 21 offices throughout California.)

Defendants' attorneys objected to the number of plaintiff attorneys and staff present at the deposition because the complaint contained a demand for attorney's fees. In response, CRLA, Inc.'s Chief of Litigation disclaimed any claim for fees. When challenged further on the number of attorneys present, the plaintiffs' attorneys could not agree on who was representing the LSC grantee and who was representing CRLA Foundation: a CRLA, Inc. attorney asserted that "five of the people are from [the LSC grantee]"; the "Foundation" (Talamantes) attorney opined that three of the seven were from the Foundation. (Exhibit A)

II. Martinez, et al. v. Munoz, et al.
(Superior Court, San Luis Obispo County, Case No. CV 001029)

This is a case where a grower, Isidro Munoz, failed to pay six named plaintiffs represented originally by LSC grantee CRLA, Inc. CRLA, Inc. obtained a default judgment against the grower in late 1999 but never sought to collect against him despite the fact that he continued to do business for the next two years. (The grower is a Hispanic former farm worker.)

Instead the LSC Grantee amended the complaint and to seek damages from the strawberry shipper who sold the grower's fruit on a commission basis. CRLA's theory was that the shipper was a joint employer of the grower even though the latter leased his land, owned all equipment, hired, fired, supervised and paid the workers and generally controlled the entire operation until the product was sold.

A few months after the shipper was named as a defendant, Mr. Talamantes, who was in the Manual A. v. JB Farm Labor case, appeared in Santa Maria from his office in Sausalito (at a distance of over 300 miles) to "co-represent" the plaintiffs with CRLA , Inc. Shortly thereafter, the LSC lawyers amended the complaint and sought attorney's fees for Mr. Talamantes. (Exhibit B, pages 1 and 14 of Complaint) Mr. Talamantes is now in private practice, yet co-counsel with CRLA in cases all over the state of California. (Exhibit C, Talamantes' declaration)

In the Martinez v. Munoz case, the LSC attorneys sent three lawyers to a two day deposition of a field man for the shipper. At a subsequent deposition, Mr. Talamantes brazenly admitted to defendant's counsel and other witnesses that he was "very supportive of CRLA and generously donated to the CRLA."

In sum, private attorneys brought in by LSC grantees to co-counsel in fee generating cases, appear to be obtaining fees collected as a result of the legal work done primarily by grantee attorneys. The private counsel then "donates" a portion of these unearned fees back to the grantee or the grantee's foundation. I believe a thorough investigation of CRLA and its "Foundation" will expose this violation of the fee rules.

Yours truly,

WESTERN GROWERS LAW GROUP

TERRENCE R. O'CONNOR, ESQ.

TRO/bac
Enclosures

March 6, 2002

The Honorable Bob Barr
Chairman, Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
B-353 Rayburn House Office Building
Washington, D.C. 20515

Subject: Submission of Material for the Record February 28, 2002 Oversight Hearing, Legal Services Corporation

Dear Chairman Barr:

Thank you for the opportunity to testify before your Subcommittee last week regarding the Legal Services Corporation (LSC). As I stated in my testimony, the American Bar Association is pleased with the progress being made at the LSC to improve delivery of legal services to the poor and strongly believes that the LSC is committed to carrying out the mandate of Congress by vigorously enforcing restrictions upon individual programs and by defending those restrictions in court when challenged.

Near the conclusion of the hearing, you inquired about a September 14, 2000 letter sent by the former LSC Inspector General (IG) Edouard Quatreveax to Harold Rogers, Chairman of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies. In the letter, the now former IG requested that Chairman Rogers include broad language in the FY 2001 CJS appropriations bill to give the LSC and its IG full access to "any and all" privileged client information and attorney work product.

On September 28, 2000, the ABA wrote Chairman Rogers to oppose this request as "unnecessary, constitutionally dubious, and as a grave disservice to millions of Americans who must rely on legal services lawyers for help." At this time, I am submitting for the record a copy of this letter and accompanying fact sheet. You should also know that at the time, many other organizations and Members of Congress also wrote Chairman Rogers to oppose such language.

Thank you again for the opportunity to testify and to submit this material for the record. Please do not hesitate to contact me should you need any additional information.

Sincerely,

L. Jonathan Ross
Chair, Standing Committee on Legal Aid and Indigent Defendants

Enclosure

cc: Members of the Subcommittee

Congress Should Not Enact the Legislative Proposal of the Inspector General of the Legal Services Corporation Which Would Eviscerate the Attorney-Client Privilege for Low-Income Americans

The Facts Do Not Warrant This Legislative Proposal

There is no need for the proposed legislation, as the facts do not indicate that the Inspector General or LSC management have encountered significant problems in verifying grantee compliance. In the recent round of Inspector General audits, 30 grantees were requested to provide information. Only two grantees objected on the basis of attorney-client privilege (none objected on any other basis), and one of those complied promptly after a U.S. District Court found that the privilege did not bar release of the information. The other grantee has chosen to appeal the decision, and the question will soon be resolved by the courts. (The same grantee has also sought a separate declaratory judgment barring access to client records in a different District Court). The only other situation where the Inspector General has been denied access to privileged client information is in Georgia, where he has demanded 10 years of sensitive client data for an "evaluation" or "research" project. His activities in this situation go well beyond his statutory authority to audit compliance with relevant laws and regulations; a number of parties, including the LSC Board of Directors, have raised serious concerns about whether this initiative is fully within his authority.

Established Auditing Protocols Allow Access to All Necessary Information

There are well-established protocols that permit auditors to fully and effectively audit for compliance without invading the privacy or other protections accorded to persons served by the audited entity. Both of the LSC grantees which earlier this year claimed that attorney-client privilege prevented their disclosure of client names offered to provide a unique identifier for each client, and to give the Inspector General full access to the process by which such identifiers were generated. This protocol would have protected attorney-client privilege while affording the Inspector General access to all data necessary for an audit. It is our understanding that the use of unique numerical identifiers or other surrogates for names is a common protocol in other disciplines, and is often used to protect the privacy of patients, clients of major accounting firms and others. We fail to understand why this simple solution has been so resolutely resisted by the LSC Inspector General.

The Inspector General's Proposal Would Deny Legal Services to Low-Income Americans

We are very concerned that this legislation would deny to legal services clients the protection of attorney-client privilege enjoyed by all other Americans. Why should being poor mean that sensitive, confidential information that you share with your lawyer can be passed on to third parties, when the same is not true for clients who can afford to retain counsel? Enactment of the proposed legislation would say, in effect, that the government will provide a lawyer for a poor person, but that full, frank and truthful communication with the lawyer is discouraged. This outcome would neither well serve the courts, nor

promote justice. In addition, a particularly distasteful element of the Inspector General's proposal is a requirement that all clients be warned that their confidential information can be shared with auditors. This warning could deter a large number of clients from seeking legal assistance in the first place.

The Inspector General's Proposal Is Legally Flawed

The attorney-client privilege is one of the oldest recognized privileges at common law. Today, the source of the privilege varies; in many states it is recognized by state statute or court rule, while in others it remains a matter of common law. Its purpose is to encourage "full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and the administration of justice." Swidler & Berlin v. United States, 118 S. Ct. 2081, 2084 (1998). The privilege operates as a safeguard for the proper functioning of the adversary system. United States v. Zolin, 491 U.S. 554, 562-63 (1989). The privilege protects confidential disclosures made by a client to an attorney in order to obtain legal representation. United States v. Sindel, 53 F. 3d 874, 876 (8th Cir. 1995). The privilege is not generally held to protect a client's identity. Sindel, at 876; In re Grand Jury Proceedings, 791 F. 2d 663, 665 (8th Cir. 1986); In re Grand Jury Subpoenas v. Anderson, 906 F. 2d 1485, 1488 (10th Cir. 1990).

The privilege is no longer applicable, as to anyone, if it has been waived. It is waived by a breach of the confidentiality of the communication by either the client or the lawyer through disclosure to a third party. Courts have found that any breach of the underlying confidentiality forfeits the client's right to claim the privilege as to any and all others. United States v. El Paso Co., 682 F.2d 530, 538-39 (5th Cir. 1982); Permian Corp. v. United States, 665 F.2d 1214, 1219 (D.C. Cir. 1981). Even inadvertent or forced disclosure has been found to waive the privilege. Disclosure during a routine audit by a defense agency waived the privilege in In re Sealed Case, 877 F.2d 976 (D.C. Cir. 1989). Similarly, a "selective" disclosure was found to waive the privilege in Permian, supra at 1219.

This brief examination of the law suggests that:

(1) Since the privilege is created by virtue of state statute or court rule, federal legislation seeking to abrogate the privilege is very likely to be challenged on constitutional separation of powers and other grounds; and

(2) Despite the proposed language stating that provision of information to the Inspector General does not constitute a waiver of the privilege, many courts could find that such disclosure does waive the privilege, and could therefore find that the information is available to all others.

In the interest of justice, the Inspector General's proposal must be rejected.

September 28, 2000

The Honorable George Gekas
Chairman
Subcommittee on Commercial and Administrative Law
House Judiciary Committee
B-353 Rayburn House Office Building
Washington, DC 20515

The Honorable Jerrold Nadler
Ranking Member
Subcommittee on Commercial and Administrative Law
House Judiciary Committee
B-336 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman and Congressman Nadler:

We understand that the Inspector General of the Legal Services Corporation (LSC) has proposed that the pending FY 2001 appropriations act for Commerce, Justice, State, the Judiciary and Related Agencies (H.R. 4690) include a broad new provision that would give the LSC and its Inspector General full access to "any and all" privileged client information and attorney work product.

We urge that this complex and significant legislative provision not be included in the appropriations act. It is unnecessary, is constitutionally dubious, and would be a grave disservice to the millions of Americans who must rely on legal services lawyers for legal help.

We do not raise these concerns lightly. We agree that the LSC and its Inspector General should have the capacity to verify the compliance of LSC grantees with applicable laws and regulations. At the same time, however, the law governing the LSC should remain consistent with the fundamental value that the Congress intended to promote by establishing the LSC - preservation of equal access to justice for all.

Only a single LSC grantee continues to question an authorized audit by the Inspector General on attorney-client privilege grounds. The Inspector General's proposal raises a host of complex issues, and its various provisions may be interpreted differently by different courts when it is challenged. This could lead to inconsistent implementation and needless harm to clients. For example, if even one court were to find the no-waiver guarantee of the proposal to be invalid, September 28, 2000
Page Two

perpetrators of domestic violence would be able to gain ready access to confidential information about those they have abused, thus placing their lives in jeopardy. We have attached a short analysis of the proposal and the reasons why Congress should not consider or enact it.

A few years ago, current LSC Inspector General Edouard Quatrevaux submitted a written statement to Congress conveying his support for reauthorization of the Legal Services Corporation. As part of his discussion of access to client records issues, he stated: "The attorney-client privilege has always been, and should be, a limitation on LSC's right of access." We do not believe that the recent minor disputes regarding this issue warrant a complete reversal of that position.

Thank you for your consideration. Should you have any questions or need additional information, please do not hesitate to contact me at (603) 629-4554.

Sincerely,
L. Jonathan Ross
Chair
Standing Committee on Legal Aid and Indigent Defendants

Enclosure

Congress Should Not Enact the Legislative Proposal of the Inspector General of the Legal Services Corporation Which Would Eviscerate the Attorney-Client Privilege for Low-Income Americans

The Facts Do Not Warrant This Legislative Proposal

There is no need for the proposed legislation, as the facts do not indicate that the Inspector General or LSC management have encountered significant problems in verifying grantee compliance. In the recent round of Inspector General audits, 30 grantees were requested to provide information. Only two grantees objected on the basis of attorney-client privilege (none objected on any other basis), and one of those complied promptly after a U.S. District Court found that the privilege did not bar release of the information. The other grantee has chosen to appeal the decision, and the question will soon be resolved by the courts. (The same grantee has also sought a separate declaratory judgment barring access to client records in a different District Court). The only other situation where the Inspector General has been denied access to privileged client information is in Georgia, where he has demanded 10 years of sensitive client data for an "evaluation" or "research" project. His activities in this situation go well beyond his statutory authority to audit compliance with relevant laws and regulations; a number of parties, including the LSC Board of Directors, have raised serious concerns about whether this initiative is fully within his authority.

Established Auditing Protocols Allow Access to All Necessary Information

There are well-established protocols that permit auditors to fully and effectively audit for compliance without invading the privacy or other protections accorded to persons served by the audited entity. Both of the LSC grantees which earlier this year claimed that attorney-client privilege prevented their disclosure of client names offered to provide a unique identifier for each client, and to give the Inspector General full access to the process by which such identifiers were generated. This protocol would have protected attorney-client privilege while affording the Inspector General access to all data necessary for an audit. It is our understanding that the use of unique numerical identifiers or other surrogates for names is a common protocol in other disciplines, and is often used to protect the privacy of patients, clients of major accounting firms and others. We fail to understand why this simple solution has been so resolutely resisted by the LSC Inspector General.

The Inspector General's Proposal Would Deny Legal Services to Low-Income Americans

We are very concerned that this legislation would deny to legal services clients the protection of attorney-client privilege enjoyed by all other Americans. Why should being poor mean that sensitive, confidential information that you share with your lawyer can be passed on to third parties, when the same is not true for clients who can afford to retain counsel? Enactment of the proposed legislation would say, in effect, that the government will provide a lawyer for a poor person, but that full, frank and truthful communication with the lawyer is discouraged. This outcome would neither well serve the courts, nor

promote justice. In addition, a particularly distasteful element of the Inspector General's proposal is a requirement that all clients be warned that their confidential information can be shared with auditors. This warning could deter a large number of clients from seeking legal assistance in the first place.

The Inspector General's Proposal Is Legally Flawed

The attorney-client privilege is one of the oldest recognized privileges at common law. Today, the source of the privilege varies; in many states it is recognized by state statute or court rule, while in others it remains a matter of common law. Its purpose is to encourage "full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and the administration of justice." Swidler & Berlin v. United States, 118 S. Ct. 2081, 2084 (1998). The privilege operates as a safeguard for the proper functioning of the adversary system. United States v. Zolin, 491 U.S. 554, 562-63 (1989). The privilege protects confidential disclosures made by a client to an attorney in order to obtain legal representation. United States v. Sindel, 53 F. 3d 874, 876 (8th Cir. 1995). The privilege is not generally held to protect a client's identity. Sindel, at 876; In re Grand Jury Proceedings, 791 F. 2d 663, 665 (8th Cir. 1986); In re Grand Jury Subpoenas v. Anderson, 906 F. 2d 1485, 1488 (10th Cir. 1990).

The privilege is no longer applicable, as to anyone, if it has been waived. It is waived by a breach of the confidentiality of the communication by either the client or the lawyer through disclosure to a third party. Courts have found that any breach of the underlying confidentiality forfeits the client's right to claim the privilege as to any and all others. United States v. El Paso Co., 682 F.2d 530, 538-39 (5th Cir. 1982); Permian Corp. v. United States, 665 F.2d 1214, 1219 (D.C. Cir. 1981). Even inadvertent or forced disclosure has been found to waive the privilege. Disclosure during a routine audit by a defense agency waived the privilege in In re Sealed Case, 877 F.2d 976 (D.C. Cir. 1989). Similarly, a "selective" disclosure was found to waive the privilege in Permian, supra at 1219.

This brief examination of the law suggests that:

(1) Since the privilege is created by virtue of state statute or court rule, federal legislation seeking to abrogate the privilege is very likely to be challenged on constitutional separation of powers and other grounds; and

(2) Despite the proposed language stating that provision of information to the Inspector General does not constitute a waiver of the privilege, many courts could find that such disclosure does waive the privilege, and could therefore find that the information is available to all others.

In the interest of justice, the Inspector General's proposal must be rejected.

September 28, 2000

The Honorable Harold Rogers
Chairman
Subcommittee on Commerce, Justice, State,
the Judiciary and Related Agencies
House Appropriations Committee
H-309 Capitol Building
Washington, DC 20515

The Honorable Jose Serrano
Ranking Member
Subcommittee on Commerce, Justice, State,
the Judiciary and Related Agencies
House Appropriations Committee
1016 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman and Congressman Serrano:

We understand that the Inspector General of the Legal Services Corporation (LSC) has proposed that the pending FY 2001 appropriations act for Commerce, Justice, State, the Judiciary and Related Agencies (H.R. 4690) include a broad new provision that would give the LSC and its Inspector General full access to "any and all" privileged client information and attorney work product.

We urge that this complex and significant legislative provision not be included in the appropriations act. It is unnecessary, is constitutionally dubious, and would be a grave disservice to the millions of Americans who must rely on legal services lawyers for legal help.

We do not raise these concerns lightly. We agree that the LSC and its Inspector General should have the capacity to verify the compliance of LSC grantees with applicable laws and regulations. At the same time, however, the law governing the LSC should remain consistent with the fundamental value that the Congress intended to promote by establishing the LSC - preservation of equal access to justice for all.

Only a single LSC grantee continues to question an authorized audit by the Inspector General on attorney-client privilege grounds. The Inspector General's proposal raises a host of complex issues, and its various provisions may be interpreted differently by different courts when it is September 28, 2000
Page Two

challenged. This could lead to inconsistent implementation and needless harm to clients. For example, if even one court were to find the no-waiver guarantee of the proposal to be invalid, perpetrators of domestic violence would be able to gain ready access to confidential information about those they have abused, thus placing their lives in

jeopardy. We have attached a short analysis of the proposal and the reasons why Congress should not consider or enact it.

A few years ago, current LSC Inspector General Edouard Quatrevaux submitted a written statement to Congress conveying his support for reauthorization of the Legal Services Corporation. As part of his discussion of access to client records issues, he stated: "The attorney-client privilege has always been, and should be, a limitation on LSC's right of access." We do not believe that the recent minor disputes regarding this issue warrant a complete reversal of that position.

Thank you for your consideration. Should you have any questions or need additional information, please do not hesitate to contact me at (603) 629-4554.

Sincerely,
L. Jonathan Ross
Chair
Standing Committee on Legal Aid and Indigent Defendants

Enclosure

Congress Should Not Enact the Legislative Proposal of the Inspector General of the Legal Services Corporation Which Would Eviscerate the Attorney-Client Privilege for Low-Income Americans

The Facts Do Not Warrant This Legislative Proposal

There is no need for the proposed legislation, as the facts do not indicate that the Inspector General or LSC management have encountered significant problems in verifying grantee compliance. In the recent round of Inspector General audits, 30 grantees were requested to provide information. Only two grantees objected on the basis of attorney-client privilege (none objected on any other basis), and one of those complied promptly after a U.S. District Court found that the privilege did not bar release of the information. The other grantee has chosen to appeal the decision, and the question will soon be resolved by the courts. (The same grantee has also sought a separate declaratory judgment barring access to client records in a different District Court). The only other situation where the Inspector General has been denied access to privileged client information is in Georgia, where he has demanded 10 years of sensitive client data for an "evaluation" or "research" project. His activities in this situation go well beyond his statutory authority to audit compliance with relevant laws and regulations; a number of parties, including the LSC Board of Directors, have raised serious concerns about whether this initiative is fully within his authority.

Established Auditing Protocols Allow Access to All Necessary Information

There are well-established protocols that permit auditors to fully and effectively audit for compliance without invading the privacy or other protections accorded to persons served by the audited entity. Both of the LSC grantees which earlier this year claimed that attorney-client privilege prevented their disclosure of client names offered to provide a unique identifier for each client, and to give the Inspector General full access to the process by which such identifiers were generated. This protocol would have protected attorney-client privilege while affording the Inspector General access to all data necessary for an audit. It is our understanding that the use of unique numerical identifiers or other surrogates for names is a common protocol in other disciplines, and is often used to protect the privacy of patients, clients of major accounting firms and others. We fail to understand why this simple solution has been so resolutely resisted by the LSC Inspector General.

The Inspector General's Proposal Would Deny Legal Services to Low-Income Americans

We are very concerned that this legislation would deny to legal services clients the protection of attorney-client privilege enjoyed by all other Americans. Why should being poor mean that sensitive, confidential information that you share with your lawyer can be passed on to third parties, when the same is not true for clients who can afford to retain counsel? Enactment of the proposed legislation would say, in effect, that the government will provide a lawyer for a poor person, but that full, frank and truthful communication with the lawyer is discouraged. This outcome would neither well serve the courts, nor promote justice. In addition, a particularly distasteful element of the Inspector General's proposal is a requirement that all clients be warned that their confidential information can be shared with auditors. This warning could deter a large number of clients from seeking legal assistance in the first place.

The Inspector General's Proposal Is Legally Flawed

The attorney-client privilege is one of the oldest recognized privileges at common law. Today, the source of the privilege varies; in many states it is recognized by state statute or court rule, while in others it remains a matter of common law. Its purpose is to encourage "full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and the administration of justice." Swidler & Berlin v. United States, 118 S. Ct. 2081, 2084 (1998). The privilege operates as a safeguard for the proper functioning of the adversary system. United States v. Zolin, 491 U.S. 554, 562-63 (1989). The privilege protects confidential disclosures made by a client to an attorney in order to obtain legal representation. United States v. Sindel, 53 F. 3d 874, 876 (8th Cir. 1995). The privilege is not generally held to protect a client's identity. Sindel, at 876; In re Grand Jury Proceedings, 791 F. 2d 663, 665 (8th Cir. 1986); In re Grand Jury Subpoenas v. Anderson, 906 F. 2d 1485, 1488 (10th Cir. 1990).

The privilege is no longer applicable, as to anyone, if it has been waived. It is waived by a breach of the confidentiality of the communication by either the client or the lawyer through disclosure to a third party. Courts have found that any breach of the underlying confidentiality forfeits the client's right to claim the privilege as to any and all others. United States v. El Paso Co., 682 F.2d 530, 538-39 (5th Cir. 1982); Permian Corp. v. United States, 665 F.2d 1214, 1219 (D.C. Cir. 1981). Even inadvertent or forced disclosure has been found to waive the privilege. Disclosure during a routine audit by a defense agency waived the privilege in In re Sealed Case, 877 F.2d 976 (D.C. Cir. 1989). Similarly, a "selective" disclosure was found to waive the privilege in Permian, supra at 1219.

This brief examination of the law suggests that:

(1) Since the privilege is created by virtue of state statute or court rule, federal legislation seeking to abrogate the privilege is very likely to be challenged on constitutional separation of powers and other grounds; and

(2) Despite the proposed language stating that provision of information to the Inspector General does not constitute a waiver of the privilege, many courts could find that such disclosure does waive the privilege, and could therefore find that the information is available to all others.

In the interest of justice, the Inspector General's proposal must be rejected.

LSC **LEGISLATIVE RECOMMENDATION**

September 14, 2000

Honorable Harold Rogers
Chairman
Subcommittee on Commerce, Justice, State,
the Judiciary, and Related Agencies
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Rogers:

I am writing pursuant to the Inspector General Act to offer recommendations concerning existing and proposed legislation affecting the Legal Services Corporation (LSC).

Grant recipients have repeatedly denied the Office of Inspector General (OIG) access to information. Moreover, the actions of the LSC President and Board of Directors have undermined the OIG by encouraging grantees to refuse to provide information to the OIG. Waiving its own statutory right of access, LSC management also has accepted denials of access to records when attempting to conduct its own compliance inspections, and acceded to ineffective inspection procedures suggested by the grantees being inspected.

For these reasons, it is no longer possible to conduct oversight activities efficiently and effectively, and I recommend that the Congress consider the attached statutory language as a remedy. I also recommend that the additional funds requested by LSC for FY 2001 for compliance inspections be put to better use.

Background

Access to information held by LSC grantees has been a long-standing problem. Prior to the 1996 enactment of statutory language providing access to client names and other data, LSC was routinely denied access to such basic information as client name, address, zip code, gender, race, date of birth, financial and other eligibility information, and information otherwise in the public domain, e.g., in court pleadings. Such denials were based on local rules of professional responsibility.

Recognizing that effective oversight and accountability for the use of federal funds could not be accomplished without access to information about clients served, the FY 1996 appropriation made clear that this information was to be provided to LSC, regardless of local rules of professional responsibility. The only limitation on access to this information was the attorney-client privilege.

Denials of Access to the OIG

Grantees have continued to deny access to information to the OIG. During a 1999 audit of case statistical data, the Legal Aid Bureau of Maryland asserted local rules of professional responsibility and attorney-client privilege to deny OIG auditors access to information on the type of legal services provided to clients. The basis for denial was an assertion that the combination of client name and legal problem code made the information confidential and privileged.

In response to OIG audit reports of significant inaccuracies in the case statistical information provided to LSC, Congress directed the OIG to "assess the case service information provided by the grantees, and report to the Committees no later than July 30, 2000, as to its accuracy." Although neither the attorney-client privilege nor local rules of professional responsibility applied to the data to be collected by the OIG, we devised a data collection process to alleviate concerns that the linkage of client name and legal problem code was subject to the attorney-client privilege. The system was similar to a so-called "Chinese wall" used in law firms.

Two grantees nevertheless refused to provide the requested information. When the grantees refused to comply with IG subpoenas, I sought enforcement in U.S. District Court. The grantees asserted that "unique identifiers" could be used in lieu of client names. The OIG evaluated the proposals and concluded that implementation of "unique identifiers" could only be checked by gaining access to the very data that "unique identifiers" were designed to conceal. Without that check, the OIG would be forced to accept an assertion that the "unique identifiers" were properly applied. Therefore, the OIG would be forced to accept the grantee's **assertion as confirmation of the assertion** that the case statistical data was accurate. The Court ordered enforcement, but one grantee appealed and the matter is pending.

In a related action, two sub-grantees and one branch office of Legal Services for New York City filed an action in the U.S. District Court for the Southern District of New York, seeking a declaratory judgment that the OIG has no right to, and the plaintiffs are under no obligation to provide, the data the OIG subpoenaed from Legal Services for New York City. That action is proceeding.

In June 2000 the OIG commenced an evaluation project involving the two LSC grantees in Georgia. The OIG requested data from the grantees, and when access was denied, subpoenaed the data. The grantees refused to comply with the subpoenas, and an action for enforcement will soon be filed in federal court. Their refusal to grant access was based primarily on attorney-client privilege and on local rules of professional responsibility.

LSC Actions Have Undermined OIG Access

In a July 18th letter to the Inspector General, the LSC President requested "in writing an official position stating your legal authority for obtaining the information… including a detailed description (of the evaluation)." The letter also questioned the "utility of seeking the non-voluntary disclosure of client data," and stated that management was "not in a position at this time to fully support [the OIG's] action." On July 19, before I could respond, the LSC President publicly questioned the OIG's authority to issue the subpoenas to the Georgia grantees in a press release titled, "LSC MANAGEMENT QUESTIONS INSPECTOR GENERAL'S SUBPOENA'S [sic] TO GEORGIA PROGRAMS. (Enclosed.)

By memorandum, I reminded the LSC President of the express statutory prohibition of interference by the Corporation in the issuance of subpoenas. The LSC President and I met when

he returned from the American Bar Association meeting in London. Based on his assurances given at that meeting, I sent a message to all grantees relating the President's position that he had **not** intended to: (1) question my authority under the Inspector General Act, (2) imply that LSC grantees not comply with the Inspector General Act; and, (3) interfere in the subpoena process. I did so in the hope that grantees would not be encouraged by the press release to refuse the OIG access to information. The next day, the LSC Vice-President for Programs sent a message to all grantees, saying my message "somewhat erroneously describes" my conversation with the LSC President. After discovery of this communication, by memorandum I requested the LSC President to identify which denials were erroneous but have not received a reply.

Shortly thereafter, a representative of the Board of Directors told me that the Board wanted a "justification" for my issuance of the subpoenas in Georgia. He also said that the Board wished to discuss "an appropriate role for the Board" in the subpoena process. I instead provided a legal opinion from OIG Counsel setting forth the statutory authority to issue subpoenas granted by the Inspector General Act. I also advised the Board of Directors that my position was that the Board "has no legitimate role in the subpoena process."

I have heard nothing in response to this memorandum, but have noted that the *Federal Register* notice of the Board's September 18th meeting contains the following Agenda Item:

> "Consider and act on report by OIG Liaison John Erlenborn concerning OIG issuance and enforcement of subpoenas on Georgia programs."

LSC Waiver of Statutory Access Authority

Additionally, LSC management has accepted denials of access to records when attempting to conduct its own compliance inspections, and acceded to ineffective inspection procedures suggested by the grantees under review.

After the Legal Aid Bureau of Maryland denied the OIG access to information in 1999, LSC management agreed to a protocol for conducting compliance reviews that accepted "unique identifiers" in lieu of client names. In December 1999, LSC management entered a written agreement with Westchester/Putnam Legal Services to accept "unique identifiers," again waiving its statutory authority.

In September 1999, LSC management attempted to conduct a compliance review of Legal Aid of Western Missouri, but was refused access to client names and eligibility data (income, assets, citizenship). After ten months of negotiation, in July 2000 LSC management agreed to accept "unique identifiers" from this grantee in lieu of client names. This took place after a court decision confirmed LSC's statutory access and while some OIG court actions on the access issue were pending.

Conclusion

Under prevailing circumstances, it is likely that the Office of Inspector General will have to obtain judicial enforcement of its subpoenas whenever it conducts oversight activities of these recipients of federal funds. It is not possible for the OIG to conduct oversight activities efficiently and effectively under these conditions.

Recommendation

I recommend that the Congress consider modifying the access provisions of current law. Recommended statutory language is attached for your consideration.

Conclusion

LSC management has demonstrated that it does not intend to use the authority granted by the appropriation statute. The compliance inspection procedures it adopted at the suggestion of grantees are ineffective.

Recommendation

For fiscal year 2001, LSC management has requested "additional M&A funds to strengthen its capacity to ensure compliance with Congressional restrictions enacted in 1996, to monitor and to improve the accuracy of its Case Services Reporting (CSR) system, and to conduct compliance investigations." I recommend that these funds be put to better use.

Please contact me or Assistant IG Laurie Tarantowicz (202 336-8808) if you would like additional information.

Sincerely,

E. R. Quatrevaux
Inspector General

Enclosures

Legal Times, 01/07/02

Divide and Conquer

How poverty lawyers are overcoming curbs on federal funds by spinning off new organizations.

BY WHEATLY AYCOCK

About a year ago, a young woman from a domestic violence shelter in Alexandria walked into the Fairfax office of Legal Services of Northern Virginia. An illegal immigrant who spoke no English, the woman wanted to get a protective order against her boyfriend, who had just been arrested for assaulting her. Staff at the shelter had helped her file for the order, but without counsel she would have to go to court alone.

Deborah Larson Harrison, director of LSNV's domestic violence unit, had to turn the woman away, telling her that the group could not represent her. The reason: The clinic received funding from the federal Legal Services Corp.

In 1996, Congress slapped a series of restrictions on the kind of clients LSC-funded lawyers can represent. No class

SEE LEGAL AID, PAGE 16

actions. No prison litigation. Severely limited immigrant representation. It was part of a drive by lawmakers to rein in what they considered improper use of funding from the LSC, which many conservatives have long

Pro Bono Bulletin Board

targeted for what they view as its liberal activist legal work.

But LSNV has now found a way to get assistance to a broader population of immigrants, while also complying with LSC funding strictures.

Legal Services of Northern Virginia, following a model tried in other states, has decided to essentially split in two—one group to accept LSC funding and live with the restrictions and another group to strike out on its own. LSNV is working in partnership with Rappahannock Legal Services, a legal services provider 50 miles away in Fredericksburg.

The two groups have pooled their LSC grants to form a separate entity based in Falls Church: the Potomac Legal Aid Society. The new organization is primarily a hot line, offering advice on standard legal issues, and providing some courtroom representation for those clients who indisputably qualify under LSC restrictions.

"We've been concerned for some time that we were turning away immigrants in urgent need of critical civil legal services," says Charles Greenfield, executive director of the Northern Virginia organization. Those rejections—numbering several hundred a year—can now instead become cases.

Follow the Money

The regulations are the precipitate of the LSC's battle with the 104th Congress, which sought sweeping reform of social programs like the LSC. In 1995, the LSC survived a bill that would have eliminated it in favor of a state grant system, but still lost a third of its funding in the 1996 budget.

The cut hit Washington, D.C., hard. The Neighborhood Legal Services Program, the city's only LSC-funded organization, cut its staff from 46 to 23 and closed three of its four offices. In Virginia, many groups abandoned growth and outreach projects, and some laid off staffers.

With the 1996 budget came the restrictions and the directive that an organization that receives any LSC money must apply LSC rules to all of its programs, not just the ones funded by the federal grant.

For LSNV, which received 17 percent of its nearly $3 million budget, or about $500,000, from the LSC, a minority of its money effectively controlled how the majority of its money was spent. In a region with a rapidly growing immigrant population, the situation ruffled providers and donors, which include local government agencies.

Legal aid groups nationwide have struggled with the same predicament. Some chose to give up federal funding altogether, while others had no financial alternative and simply accepted the restrictions. Others took a middle road and divided into two groups, one LSC and one non-LSC program. It is this precedent that LSNV and Rappahannock are following.

SERVICE-ORIENTED: Legal Services of Northern Virginia's Charles Greenfield says the best way to provide legal aid to locals is to split LSNV in two, forming one agency that does not rely on LSC funds.

The first batch of spinoffs, which began with the bill's passage in 1996, ruffled lawmakers.

"Congress, for a while, said, 'You can't deceive us this way. We know you're just trying to circumvent this rule,'" says Alexander Forger, a special counsel at New York's Milbank, Tweed, Hadley & McCloy who was then president of the LSC. "But all they can do is stop funding. That's all that's left. They've imposed as many restrictions as they can possibly think of and have made it very difficult for poor people to have access to justice. There's not much more they can do to this organization."

Virginia Is for Spinoffs

The first spinoff in Virginia came in 1998, by the Charlottesville-Albemarle Legal Aid Society. The Roanoke Valley Legal Aid Society, Richmond's Central Virginia Legal Aid Society, and Petersburg's Southside Virginia Legal Services have all restructured to meet client needs without breaking LSC rules.

When the Charlottesville-Albemarle Legal Aid Society—now Legal Aid Justice Center—dropped its federal funding, it directed its grant to Piedmont Legal Services and, at the same time, used available state funds to set up the Virginia Justice Center for Farm and Immigrant Workers. The center now serves the more than 50,000 farm workers and immigrants who come to work in the state each year.

Today, says Executive Director Alex Gulotta, Piedmont Legal Services represents clients that fit LSC guidelines, mostly those whose household income is below 125 percent of the poverty line and hold qualifying immigration status, while the older organization is able to represent a broader swath of the poverty population, file class actions, and seek attorney fees.

Says Gulotta: "Once it was clear that people were going to have to reorganize anyway, more and more people said, 'It makes sense to reorganize the way Charlottesville did and have two providers.'"

Gulotta sees Northern Virginia as ripe for this reorganization because of the many LSC-ineligible aliens living in the area. Greenfield agrees, citing the growing number of immigrants that LSNV has turned away because they are not citizens, permanent residents, or among the few exceptions—mostly refugees, Native Americans, and residents of American territories—stipulated by LSC eligibility requirements.

Through subdivisions and mergers, the number of LSC recipients is shrinking in Virginia. But the number of legal service providers is rising.

Since 1996, the number of LSC-funded groups in Virginia has been reduced by almost half, down from 11 to six once LSNV and Rappahannock drop off. At the same time, the Virginia Law Resource Center lists 14 legal aid providers statewide, and Potomac will make 15.

The model for the Potomac Legal Aid Society, explains acting Executive Director Joseph Downey, is to "provide quick advice and counsel" via the hot line, and send more-involved cases to Rappahannock or LSNV—which is just down the hall, since Potomac is subleasing from the older organization. LSNV's largest practice group is family law, and many procedural questions can be handled over the phone. LSNV has long planned to develop a full-time hot line to absorb these calls.

If LSNV and Rappahannock cannot take the case, one of Potomac's seven staffers will handle representation, as long as taking the case would not violate LSC guidelines. But taking on cases, explains Downey, means fewer people will be able to answer the phones.

And if a call should come in from the woman who approached Deborah Harrison last year, the staffer can refer her to the new

[NOTE: Additional material submitted for the Hearing Record is not reprinted here but is on file with the House Judiciary Committee. The material referred to is listed below.

Congressman Jeff Flake, a Representative in Congress From the State of Arizona referenced a Web page addressed TaxRebatePledge.org

○